

LUISA OCAMPO, COMPLAINANT, VS. ATTY. MAURO N. DOMINGUEZ, RESPONDENT.*Adm. Case No. 1006. October 17, 1980*

Ponente: FERNANDO, C.J.

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It does not admit of doubt that based on the allegation of the complaint against respondent Mauro N. Dominguez, a member of the Philippine Bar, he could be subjected to disciplinary action. The accusation against him by complainant Luisa Ocampo was that he courted her and thereafter induced her to live with him without disclosing until much too late that he was a married man.[1] Apparently, at that, she was not entirely dissatisfied with the arrangement, but she was prompted to file this case when thereafter he abandoned her. Whatever be the motive, not long after, she executed an affidavit of desistance. On its face, considering the statements therein contained and the manner of expression, such affidavit lends itself to the suspicion that it was prepared by some one with a certain degree of familiarity with the vocabulary of lawyers. Such a circumstance militated against its persuasiveness. She would have this Court believe that "after a thorough study of the circumstances leading to the institution of said administrative proceedings, as well as the basis thereof, [she has] come to the sincere conviction that [she has] committed an honest mistake, but definitely without malice, in the assessment and evaluation of the basis of the complaint and [she was] now of the honest belief that the offensive acts complained of and imputed the respondent in the complaint," did not suffice to sustain the charge for disbarment.[2] She even went so far as to state that "under the circumstances, there is no honorable recourse left for [her] as complainant, if justice and fairness is to be accorded the respondent, except to desist from further prosecuting"[3] her complaint. This Court certainly was not taken in and respondent was still required to answer. There was a denial from respondent, but it was evasive in character as he merely claimed that he had no knowledge or information sufficient to form a belief as to the truth of the averments contained in the complaint. Under the circumstances, this Court deemed it best that he should be subjected to investigation. Accordingly, the case was referred to the Office of the Solicitor General for investigation, report, and recommendation.

Evidently, complainant had made up her mind not to proceed further with the complaint. It was set for hearing by the Office of the Solicitor General four times but on the first three occasions, she did not appear. Only after the investigator had given her a stern warning that her failure to do so would be visited with serious consequences did she attend. To say she was far from cooperative is to be guilty of an understatement. In trying to explain why she filed the complaint and thereafter desisted from prosecuting it, she came out with the story that when respondent member of the bar refused to be retained as her counsel in a suit for legal separation, she was so resentful that she charged him with immorality as a form of retaliation. A likely story indeed. She denied, however, having lived with respondent or having had any marital relations with him. She even went so far as to admit that she was suffering from mental illness. Respondent, under the circumstances, submitted the case without further evidence. It is understandable if under the circumstances, the Report of the Solicitor General,[4] submitted to this Court on August 29, 1980, was for the dismissal of the case.

In the absence of any evidence, it is of course indisputable that the case should be dismissed. That has been the settled law as far back as the leading case of *In re Tionko*,^[5] decided in 1922. To quote from the opinion of Justice Malcolm: "The serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence against the respondent. The presumption is that the attorney is innocent of the charges preferred and has performed his duty as an officer of the court in accordance with his oath."^[6] It has been followed since then.^[7]

It must be made clear, however, that the dismissal is brought by the absence of any competent and credible evidence. That is all that it means. There are circumstances in the record that would seem to indicate that respondent's conduct was far from blameless. It would not be an affront to reason and common sense to assume that the subsequent conduct of complainant after the filing of her charges was due to his machination. Thus both the affidavit of desistance couched in language of a member of the bar, his evasive answer as well as the inconclusive and non-too-believable explanation of complainant could attest to the success of his endeavor to have this administrative complaint against him dismissed. While, therefore, that ought to be the case, still this opinion should not be misinterpreted as in any wise a testimonial to his spotless character.

WHEREFORE, this complaint is dismissed with the admonition that respondent Mauro N. Dominguez should behave in a manner that would not give rise to any legitimate suspicion that his conduct is offensive to the standard of morality expected of a member of the legal profession. Let a copy of this resolution be spread on his record.

Teehankee, Barredo, Aquino, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.
Concepcion, Jr., J., on official leave.
Makasiar, J., dissents in a separate opinion.

[1] Petition, par. 4.

[2] Affidavit of Desistance dated June 23, 1971.

[3] *Ibid.*

[4] Solicitor General Estelito P. Mendoza was assisted by Assistant Solicitor General Reynato S. Puno and Solicitor Jesus V. Diaz.

[5] 43 Phil. 191.

[6] *Ibid.*, 194.

[7] Cf. *Javier v. Cornejo*, 63 Phil. 293 (1936); *De Guzman v. Tadeo*, 68 Phil. 554 (1939); *In re Attorney C. T. Oliva*, 103 Phil. 312 (1958); *Bianza v. Arcangel*, Adm. Case No. 492, Sept. 5, 1967, 21 SCRA 1; *Magno v. Gellada*, Adm. Case No. 767, Dec. 20, 1971, 42 SCRA 549; *Argana v. Cruz*, Adm. Case No. 1236, July 31, 1975, 65 SCRA 550; *Misamin v. San Juan*, Adm. Case No. 1418, Aug. 31, 1976, 72 SCRA 491; *Acosta v. Serrano*, Adm. Case No. 1246, Feb. 28, 1977, 75 SCRA 253; *Obrero v. Tagala*, Adm. Case No. 984, April 22, 1977, 76 SCRA 316; *Santiago v. Bustamante*, Adm. Case No. 827, April 29, 1977, 76 SCRA 527.

SEPARATE OPINION

MAKASIAR, J.:

Before dismissing this disbarment proceeding against respondent on the basis of an affidavit of desistance by the complainant, the latter should first be summoned to personally appear before the Court to identify and affirm the contents of said affidavit of desistance. The said affidavit, by its language, may have been prepared by the respondent or some other lawyer, but certainly not by the complainant who does not seem to have any acquaintance with legal terminology. The Honorable Chief Justice himself suspects that the same "was prepared by someone with a certain degree of familiarity with the vocabulary of lawyers", which "circumstance militated against its persuasiveness." If her arm were not twisted into executing such an affidavit of desistance couched in a legalese jargon uncommon to her, then she should be prosecuted for perjury for instituting the sworn complaint. The procedure suggested would discourage other persons from instituting baseless charges against members of the Bar and from imposing upon this Court.

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