

ENGRACIO SIMYUNN DIALO, JR., COMPLAINANT, VS. HON. MARIANO JOAQUIN S. MACIAS AND CAMILO BANDIVAS, PRESIDING JUDGE AND COURT SHERIFF, RESPECTIVELY, OF BRANCH 28 OF THE REGIONAL T...

A.M. No. RTJ-04-1859. July 13, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In a verified Complaint[1] filed on March 18, 2002, Engracio Simyunn Dilao, Jr., by counsel Reynaldo S. Llego of the Llego and Llego Law Office, charged herein respondent the Honorable Mariano S. Macias, Presiding Judge of Branch 28 of the Regional Trial Court of Zamboanga del Norte with station at Liloy, along with his co-respondent Sheriff Camilo Bandivas, with oppression, abuse of authority, incriminating an innocent person, grave misconduct and obstruction of justice.

It appears that Margie Corpus Macias, wife of respondent judge, had earlier filed an administrative complaint against him for immorality and conduct prejudicial to the best interest of the service, docketed as A.M. RTJ-001-1650 (immorality complaint) and referred to then Court of Appeals Associate Justice Eriberto U. Rosario, Jr., by Resolution of this Court dated August 20, 2001, for Investigation Report and Recommendation.

Justice Rosario set the immorality complaint for hearing on November 27 – 29, 2001 and requested the parties to submit their respective lists of witnesses and summaries of documentary evidence intended to be presented.[2]

By Compliance dated November 17, 2001,[3] Mrs. Macias submitted her list of witnesses as follows:

- Mrs. Margie Corpus Macias, complainant herein;
- Roel Mutia, a resident of Brgy. Sta. Filomena, Dipolog City;
- Shem B. Tabataba, a resident of Poblacion West, Municipality of Salug, Zamboanga del Norte;
- Aniceto A. Zozobrado, a resident of Taway, Ipil, Zamboanga del Norte;
- Ruben Perater, a resident of Taway, Ipil, Zamboanga del Norte;
- Zacarias “Tata” A. Cordova, a resident of Taway, Ipil, Zamboanga del Norte;
- Marictibert Corpus Macias, son of complainant and respondent and a resident of Cagayan de Oro City; and
- Others. (Emphasis supplied)

On motion of Mrs. Macias, the scheduled hearings of the immorality complaint in November 2001 were reset to her suggested dates, January 28 – 31, 2002.[4] The January 2002 scheduled hearings were, on motion of the parties, reset to March 11 – 14, 2002.[5]

In the meantime or on January 31, 2002, herein complainant Engracio Simyunn Dialo, Jr. executed before a

Quezon City Assistant Prosecutor a 4-page Affidavit[6] narrating that in December 2000 he was requested by Mrs. Macias “to help her catch and gather evidence to prove that her husband is philandering;” and that he granted the request and carried it out soon after, entailing a period of more than 3 months during which he witnessed, among other things, respondent repair to the boarding house of his suspected mistress with whom he went out and, upon their return, they brought with them groceries. Copy of this Affidavit was later to be furnished respondent judge’s counsel on March 12, 2002.

On March 6, 2002, herein complainant, together with Roel Mutia (Mutia) who was, as reflected above, a listed witness of Mrs. Macias in the immorality complaint, left Dapitan City via a boat. On board the same boat were herein respondent judge, one Elmer Desamero (Desamero) and PO2 Alexander Avila Lozada of the Sindangan Police Force who was issued a Travel Order “to escort/secure” respondent judge who was going to Manila effective March 6 – 15, 2002, with authority “to carry his issued FAS and ammos.”

On reaching Cebu City, complainant and Mutia boarded a Philtranco bus bound for Manila. PO2 Lozada and Desamero also boarded the same bus for Manila. As for respondent judge, he left Cebu for Manila by air.

Complainant and Mutia having been allegedly observed by PO2 Lozada to have acted suspiciously and to have tailed respondent judge during the boat trip from Dapitan City to Cebu, and to have likewise acted suspiciously during the bus trip from Cebu to Manila, PO2 Lozada during a stop-over of the bus trip to Manila relayed by telephone his observations to respondent judge who had earlier arrived in Manila.

As respondent judge was allegedly convinced that complainant and Mutia were would-be assassins, he and his co-respondent sheriff whom he had earlier sent to Manila on official business alerted the Pasay City police force about it by personally relaying “derogatory information/complaint” about complainant and Mutia and requesting for their arrest.[7]

On complainant’s and Mutia’s arrival at the Philtranco Pasay station on March 8, 2002, at about before midnight, they were met by 6 Pasay City policemen and their “bodies, bags and other things [were] thoroughly searched for illegal items” but none was found. They thereafter were detained until their release at noon of the following day, March 9, 2002, after Mrs. Macias, who was requested to be notified by complainant, arrived at the Pasay Police station at Harrison Street before which she explained that the two repaired to Manila to attend a hearing as witnesses in the immorality complaint against respondent judge.

Hence, arose the administrative complaint at bar.

In respondents’ “Answer with Plea For the Dismissal of the Case” filed on July 2, 2002, respondent judge denied the charges. He explained that it was only on March 12, 2002 when his counsel was served a copy of complainant’s Affidavit dated January 31, 2002 that he knew that complainant was a witness in the immorality complaint, the latter not having been in the list of witnesses submitted by Mrs. Macias, hence, he could not have obstructed justice.

Respondent judge also denied having seen, known or learned of complainant’s presence in Manila on January 25, 2002 when he was supposed to have been presented as a witness during the scheduled, albeit rescheduled, January 2002 hearing of the immorality complaint, hence, he could not have planned to prevent him from testifying therein.

And respondent, while admitting having sought the “assistance” of the Pasay City police, found nothing wrong therewith.

As for respondent sheriff, he claimed that he merely fetched PO2 Lozada at the Philtranco Pasay terminal and had

nothing to do with complainant's and Mutia's being brought to the Pasay City police station.

INVESTIGATING JUSTICE'S REPORT AND RECOMMENDATION:

Justice Marina L. Buzon, to which the present administrative case was referred by this Court's Resolution of December 16, 2002, set the case for hearing on several dates for reception of complainant's and respondents' evidence.

By Justice Buzon's Report of June 11, 2003,[8] she relates, as follows, her scheduling of the complaint for hearing and the execution by complainant of an Affidavit as well as his failure to show up for hearing:

On March 4, 2003, the undersigned received an urgent manifestation and motion from the counsel of the complainant, Atty. Reynaldo S. Llego, alleging that the complainant is detained at the Municipal Jail of Salug, Zamboanga del Norte in connection with a criminal case pending before Judge Macias in which the bail recommended for his provisional liberty is P200,000.00; that the complainant is a poor man and his relatives and friends are trying their best to secure and post the bail bond for his temporary liberty; and that it is impossible for the complainant to attend the hearing of this case on the scheduled dates as set in the Order dated January 29, 2003. The complainant then prayed that the hearing of this case be re-scheduled to at least one month from March 10, 2003.

At the scheduled hearing on March 10, 2003, only respondents and their counsels appeared. They interposed no objection to the resetting of the hearing in this case. In an Order of even date, the presentation of the evidence for the complainant was reset on May 19, 20 and 21, 2003 and that for the respondents on May 22 and 23, 2003, all at 10:00 a.m. and 2:00 p.m., with warning that no further postponement shall be entertained.

On May 7, 2003, the undersigned received an Affidavit (Rollo, pp. 109-114) executed on April 25, 2003 by complainant Dialo, who is allegedly detained at the Zamboanga del Norte Correctional Rehabilitation and Correction Center, Barangay Sicayab, Dipolog City, declaring as follows:

- I DO NOT KNOW WHAT WAS CONTAINED IN THE AFFIDAVIT DATED JANUARY 31, 2002. IT WAS NOT READ NOR TRANSLATED TO ME. I DID NOT UNDERSTAND IT.

- I DO NOT ALSO KNOW WHAT WAS CONTAINED IN THE COMPLAINT DATED MARCH 16, 2002, WHICH WAS THE BASIS FOR ADMINISTRATIVE CASE NO. OCA IPI NO. 02-1439-RTJ AGAINST RTC JUDGE MARIANO JOAQUIN S. MACIAS AND CAMILO BANDIVAS. IT WAS NOT READ NOR TRANSLATED TO ME. I DID NOT UNDERSTAND IT.

- THE AFFIDAVIT AND COMPLAINT WERE MADE AT THE INSTIGATION, INDUCEMENT AND OFFER OF FINANCIAL FAVOR BY MARGIE CORPUS MACIAS TO ME TO DESTROY HER HUSBAND, RTC JUDGE MARIANO JOAQUIN MACIAS."

The Affidavit is accompanied by a letter dated April 25, 2003 (Ibid., 127) of complainant Dialo stating that he did not authorize the filing of a complaint against respondents; that he did not know the contents of the complaint because only the last page thereof was presented to him for his signature upon the instigation of Attys. Reynaldo and Remedios Llego and Margie Corpus Macias, the estranged wife of Judge Macias, and he was told that it would help Mrs. Macias in destroying her husband; that he did not engage the services of Attys. Reynaldo and Remedios Llego, as he has no money to pay them, nor did he authorize them to appear and represent him in any case; and that he is asking for the dismissal/withdrawal of the complaint and that Attys. Reynaldo and Remedios Llego enjoined from representing him as his lawyers. The complainant further alleged that his affidavit and letter were read and translated to him in the Visayan dialect, which he understands, and that he affixed his left thumbmark thereon because he lost his right hand sometime in January, 2003.

At the schedule (sic) hearings for the presentation of the evidence for the complainant on May 19, 20 and 21,

2003, only respondents and their counsels appeared. In view thereof, respondents moved that the complainant be deemed to have waived his right to present evidence in support of his complaint and that the case be dismissed. In an Order dated May 22, 2003, the complainant was deemed to have waived the presentation of his evidence and the case was considered submitted for resolution. (Underscoring supplied)

Justice Buzon continues:

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint (*Lorena v. Encomienda*, 302 SCRA 632, 641). The basic rule that mere allegation is not evidence cannot be disregarded (*GSIS v. Court of Appeals*, 296 SCRA 514, 531). This is particularly true in the instant case where complainant Dialo denied knowledge of the contents of the affidavit dated January 31, 2002 and the complaint dated March 16, 2002, as the same were not read nor translated to him, considering that he could hardly read and understand English. Dialo likewise stated that he has no complaint against respondents because he knows that what happened to him was substantially due to his fault and very suspicious actuations.

Thus, the absence of Engracio Simyunn Dialo, Jr., Atty. Reynaldo S. Llego and their witnesses at the hearing scheduled on May 19, 20 and 21, 2003 amounted to a waiver of their right to present evidence in support of the complaint against respondents and evinced a lack of interest to prosecute the same. (Underscoring supplied)

Accordingly, Justice Buzon recommends the dismissal of the case for failure of complainant to prove the allegations in his complaint.

THIS COURT’S RULING

The withdrawal or disavowal by a complainant of the contents of his administrative complaint does not necessarily warrant its dismissal.

. . . [W]ithdrawal of a complaint or subsequent desistance by the complainant in an administrative case does not necessarily warrant its dismissal. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. The Court does not dismiss administrative cases against members of the Bench merely on the basis of withdrawal of the charges. Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. To be sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary. And the program and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties.[9]

In the case at bar, complainant did not show up to either affirm on the witness stand the contents of his Affidavit of disavowal of the allegations of the complaint prepared for him by Atty. Llego or prove the same. In any event, there are facts which are admitted and/or not refuted by respondent judge which do not warrant the complainant’s dismissal.

In other words, independently of the testimony of the complainant, the case against respondent judge can and does prosper.

Thus, while respondent judge asserts that complainant, along with Mutia, were not arrested as they were merely invited “for further questioning,” he citing Annex “C” to the Complaint which is an “EXCERPT FROM POLICE BLOTTER OF SPECIAL OPERATION GROUP PASAY CITY POLICE OFFICE F. B. HARRISON ST., PASAY CITY, METRO MANILA DATED MARCH 8, & 9, 2002,”[10] he is glaringly silent on Annex “B” of the same Complaint which is an “EXCERPT FROM POLICE BLOTTER OF SPECIAL OPERATION GROUP PASAY CITY POLICE FORCE F. B. HARRISON ST., PASAY CITY, METRO MANILA DATED MARCH 8,

2002”[11] reading verbatim as follows:

3:00 PM - One Judge Mariano Macias y Siquillo 61 yrs. Old, married, res of Sindangan, Zamboanga del Norte, accompanied by sheriff Camilo Bandinas personally appeared to this office and requested police assistance.

Reportee disclosed that he is subject of assassination by two-hired killer coming from Dipolog City, Zamboanga del Norte on board Philtranco Bus with body number 184.

Reportee further states that he will attend court hearing on March 11,12,13 and 14 at the Court of Appeals, Mla and the assassins might take advantage of this opportune time to do their job. Hence, reportee requested this office for the arrest of the suspects upon arrival at Philtranco Terminal tonight. (Emphasis and underscoring supplied)

And while respondent judge may not indeed have known that complainant was going to testify against him in the immorality case, complainant not having been in the list of witnesses submitted by Mrs. Macias in the immorality complaint, respondent was well aware that Mutia, who was in the company of complainant in the same boat ride taken by respondent judge (and who was also arrested and detained by the Pasay City Police), was in the said list of witnesses. Respondent’s disclaimer then that he could not have committed “obstruction of justice” does not readily persuade.

But assuming *arguendo*, however, and giving respondent the benefit of the doubt that he did not intend to obstruct justice, being a judge, respondent was aware or should have known that a warrantless arrest could only have been lawfully effected if any of the circumstances enumerated in Sec. 5 of Rule 113 of the Rules of Court, to wit:

SEC. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

- When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
- When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7,

was present. But not one of these circumstances was present. To begin with, the alleged would-be victim of assassination – respondent judge – was not even, by his claim, in Pasay where the warrantless arrest was effected.

By respondent’s act of requesting for complainant’s and his companion’s warrantless arrest, he violated complainant’s constitutional right, an act which partakes of the nature of oppression, defined as an “act of cruelty, severity, unlawful exaction, domination or excessive use of authority.”[12]

WHEREFORE, respondent Judge Mariano Joaquin S. Macias is hereby found guilty of oppression and is fined the amount of P20,000.00. As his application for retirement has in the meantime been approved, albeit payment of his benefits has been held in abeyance, the Financial Management Office, Office of the Court Administrator, is authorized to deduct the amount therefrom.

The Complaint against respondent Sheriff Camilo Bandivas is hereby DISMISSED for insufficiency of evidence.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Rollo at 1-8, with Annexes “A” – “D” at 9-15.

[2] Id. at 51.

[3] Id. at 52.

[4] Id. at 56.

[5] Id. at 57.

[6] Id. at 9-12.

[7] Excerpt from Police Blotter, id. at 13.

[8] Id. at 223-231.

[9] Rizon v. Judge Zerna, 417 Phil. 634 (2001); Atty. Molina v. Judge Benedicto A. Paz, et al., A.M. No. RTJ-01-1638, December 8, 2003.

[10] Rollo at 14.

[11] Vide Note 7.

[12] Salalima v. Guingona, Jr., 257 SCRA 55, 90 (1996) citing Ochate v. Ty Deling, 105 Phil. 384, 390 (1959).

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