

SOLEDAD AVILLAR DE MULATA, ANTONIO ESTEBAN, AND BUENAVENTURA BAYO, COMPLAINANTS, VS. JUDGE ELIAS C. IRIZARI, RESPONDENT.

Adm. Matter No. 71-MJ. November 29, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

These are two administrative complaints filed by Soledad Avillar and Antonio Esteban (Administrative Case No. L-2) and Buenaventura Bayo (Administrative Case L-3), respectively, against respondent Municipal Judge Elias C. Irizari of Hinatuan, Surigao del Sur. Both cases advert to respondent's conduct of the preliminary examination in two criminal cases filed with his court.

In Administrative Case No. L-2, respondent is charged with "grave abuse of discretion, favoritism and bias" for having conducted the preliminary examination in Criminal Case No. 1074 without giving the accused therein an opportunity to be heard because they were not granted the occasion to cross-examine the complainant and her witnesses before issuing the warrant for their arrest; that they were arrested and detained in jail for fifteen (15) days without knowing why they were arrested as neither of them were shown any warrant of arrest; and that they were "treated like criminals of high degree" because they were first required to post bail for P20,000.00, "although later on thru the intervention of a brother of theirs in the Iglesia ni Cristo," they were bailed out for P10,000.00.

According to District Judge Otilio G. Abayan of the Court of First Instance, Branch II, Lianga, Surigao del Sur, who was designated to investigate these administrative cases, Criminal Case No. 1074, which involved a complaint for "Assault Upon a Person in Authority with Physical Injuries", was filed by the Chief of Police of Hinatuan on July 19, 1969 against Soledad Avillar and Antonio Esteban. The Investigator found that respondent municipal judge issued the order for the arrest of the accused "after conducting a preliminary examination consisting in the adoption of the affidavits of the prosecution witnesses and the propounding of additional questions to them." The requirement that the investigating judge must examine the witnesses personally, which examination shall be under oath and reduced to writing in the form of searching questions and answers,[1] is fulfilled where the municipal judge examined under oath the witnesses by asking questions that were adopted from a previous investigation and considered by him as sufficiently searching and, which questions and the answers thereto, were in writing and sworn to before him prior to his issuance of the order of arrest.[2] Under Section 5, Rule 112 of the Revised Rules of Court, the accused is not entitled as a matter of right to be present during the preliminary examination or to cross-examine the witnesses presented against him before his arrest.[3] In Criminal Case No. 1074, complainants not only failed to question in the aforesaid case the validity of the preliminary examination, but also expressly waived their right to the second stage of the preliminary investigation. This case was subsequently elevated to the Court of First Instance and docketed as Criminal Case No. L-125. On motion of the Provincial Fiscal, the case against Antonio Esteban was dismissed, while Soledad Avillar was found, after trial, guilty of the crime of Slight Physical Injuries.

Contrary to the claim of the complainants that they were first required to post bail at P20,000.00, the amount of the bail fixed for their provisional liberty as per Order of respondent dated June 19, 1969 in Criminal Case No. 1074 (Exhibit "VII-A") is P5,000.00. We agree, therefore, with the recommendation of the Investigating Judge that on the basis of these facts, this charge should be dismissed.

In Administrative Case No. L-3, respondent is charged with having arbitrarily dismissed a "Grave Coercion" case filed by Buenaventura Bayo, a member of the Iglesia ni Cristo, against Barrio Captain Monica Penas and fourteen (14) others. Complainant asserts that he was notified only two days before the preliminary examination set on July 22, 1969; that after he was asked a few questions, he was informed that the case was dismissed; that he was deprived of his right to be represented by his lawyer; and that the act of respondent in dismissing this case while ordering the arrest of the accused in Criminal Case No. 1074 (subject of Administrative Case No. L-2) shows his bias and prejudice against members of the Iglesia ni Cristo.

It was shown, however, that although the complaint was filed on July 3, 1969, the preliminary examination was set for July 21, 1969, but it was postponed to the following day. Therefore, complainant had sufficient time and opportunity to consult his lawyers if he so desired.

The record also discloses that the dismissal of the case was made after respondent had propounded searching questions to complainant Buenaventura Bayo (Exhibit "26") and his witnesses (Exhibits "19", "20", "21" and "22"). This dismissal was predicated upon respondent's finding that the accused therein had acted without malice or criminal intent. This conclusion is borne out by the admission of the complaining witness, Buenaventura Bayo, a member of the Iglesia ni Cristo, during the preliminary examination to the effect that he did not bury his dead child at the Roman Catholic Cemetery of Barrio San Juan on the morning of June 14 1969, because he was told by Monica Penas and Pelegrino Malinao that said cemetery is exclusively for the use of the members of said church. However, the same Monica Penas, with the assistance of Felix Sereno, chartered at their own personal expense a pump boat to bring the cadaver of his daughter to the Poblacion of Hinatuan for burial at the public cemetery on the afternoon of the same day.

It was also shown that Atty. Fermin B. Quejada, counsel of the complaining witness, received a copy of this order of dismissal from respondent court. Said counsel never bothered to file a motion for reconsideration or take any action for the reinstatement of the case.

The purpose of the preliminary examination is to determine whether or not there is sufficient reason to issue a warrant of arrest. Section 6 of Rule 112 of the Revised Rules of Court requires that the warrant of arrest shall be issued only when the judge conducting the preliminary examination is satisfied that the offense has in fact been committed and that there is a reasonable ground to believe that the accused committed the same. This is in conformity with the constitutional requirement that "no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce."^[4] The question as to whether "probable cause" exists or not, must, therefore, depend upon the judgment and discretion of the judge issuing the warrant. We are not satisfied that in the circumstances attendant to the case, respondent, in dismissing the complaint for "grave coercion", has acted arbitrarily.

We do note, however, that respondent, upon accepting the complaint, failed to enter the same in his general docket book, so that the case had no corresponding docket number, before conducting the preliminary examination. The rules specifically require that the municipal judge must keep a docket in which he shall enter all civil and criminal cases or proceedings commenced before him.^[5] It is a public record available during office hours for examination by any person, upon his reasonable request, to ascertain the status of any given case pending therein.^[6] Respondent is, therefore, admonished to keep a faithful record of all proceedings before him

in the dockets required by law to be kept for that purpose.

WHEREFORE, respondent is exonerated from the aforementioned charges, with the above admonition.

Fernando, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

[1] Sec. 87(c) of the Judiciary Act, as amended by Republic Act No. 3828.

[2] Luna vs. Plaza, 26 SCRA 310, 318.

[3] Abrera vs. Munoz, 108 Phil., 1124.

[4] Article III, Sec. 1(3) 1935 Constitution. See Article IV, Section 3, New Constitution.

[5] Sections 8 and 18, Rule 136, Revised Rules of Court.

[6] Beverlein vs. Hodges, 10 NYS 505-506; Section 98, Judiciary Act.

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