

JUDGE MARIANO TUPAS, COMPLAINANT, VS. LEO R. CABALLERO, RESPONDENT.

A.M. No. P-88-157. April 23, 1993

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PER CURIAM:

Judge Mariano C. Tupas of the Regional Trial Court, Branch 4 of Panabo, Davao, filed with the Court a sworn complaint, dated 4 January 1988, against respondent Leo R. Caballero, who was then Interpreter and Officer-in-Charge of the Office of the Clerk of Court, Regional Trial Court, of Panabo, Davao, Branch 4.

By a Resolution, dated 9 March 1988, respondent was placed under preventive suspension and was required to file an Answer.

Respondent Caballero filed his Answer, dated 14 April 1988. There he claimed that the present complaint was merely a counter-charge to the administrative case docketed as Adm. Case No. RTJ-87-141, previously filed on 1 December 1987 by the Association of Court Employees of Panabo, Davao, of which respondent was a member, against complainant Judge Tupas.[1]

Two (2) additional complaints against respondent Caballero were later filed by Judge Tupas, the first dated 27 March 1990 and the second dated 16 June 1990.

In a Resolution of the Court dated 29 August 1990, the case was referred to Executive Judge Marcial L. Fernandez of the Regional Trial Court of Davao Del Norte for investigation, report and recommendation.

A hearing was set by the Investigating Judge for 11 October 1990, and notice to respondent was sent through the Station Commanders of Pantukan, Davao and of Panabo, Davao Integrated National Police. The station Commander of Pantukan sent a reply stating that respondent had not been contacted as he was then "operating a tunnel at Magasecareg, Mabini, Davao." A follow-up notice, dated 9 October 1990, was then sent to the INP Station Commander of Mabini, Davao who sent a reply on the same day that, according to a Barangay Councilor from Anitapan, Mabini, Davao, respondent was not known in the said place. Despite respondent's absence, the hearing proceeded as scheduled "without prejudice of (sic) cross-examination, and further disposition by the Supreme Court." [2]

A second hearing was set for 16 October 1990 and notice to respondent was relayed through the INP Station Commander of Panabo, Davao who informed the Investigating Judge that respondent had transferred his residence to Pantukan, Davao. [3] A notice of the hearing was then sent to the INP Station Commander of Pantukan, Davao who reiterated his previous statement that respondent was "operating a tunnel in Magasecareg, Mabini, Davao."

The report of Executive Judge Marcial L. Fernandez, dated 19 October 1990, found respondent guilty of: (1) malversation and misappropriation of money consigned with the court; (2) irregularities in the performance of duties; (3) gambling and willful non-payment of debts; and (4) extortion, and recommended that respondent be dismissed from the service with disqualification for re-employment in the government and forfeiture of all

retirement benefits without prejudice to criminal or civil actions which may be taken against respondent.

The Court believes that, in accordance with the requirements of procedural due process, the additional complaint, dated 27 March 1990, and the second additional complaint, dated 16 July 1990, should be disregarded in the process of reaching a decision in this case. There is nothing in the records to show that a copy of the first additional complaint was ever served on the respondent. This additional complaint does not carry with it a post office registry receipt to show that complainant attempted to furnish respondent a copy thereof: neither does the record of the proceedings before the Investigating Judge (to whom the additional complaint was referred) show that Judge Fernandez had ordered a copy to be served on respondent. The second additional complaint is not under oath.[4] In *Cutaran v. Villanueva*,[5] the Court held that an administrative complaint, being accusatorial in nature, must be sworn to; otherwise, it should be dismissed.

Further to the matter of due process, while respondent may not have been able to rebut the evidence complainant presented during the 11 October 1990 and 16 October 1990 hearings, he has only himself to blame. He knew of the pending administrative case against him, but he nevertheless changed his residence without notifying this Court or the Regional Trial Court or the complainant of his new address.

We turn to the charges made in the original complaint.

In respect to the charge of malversation the Investigating Judge found that:

"On 16 October 1986 Atty. Alberto Lumakang counsel for the plaintiff re-Marcela Requillo v. Rene Victoria Rinal Civil Case No. 86-14 for Repurchase and Damages, consigned in court P28,000.00 and was received by Leo Caballero as evidenced by O. R. No. 5793761. Upon official verification in the Office of the Municipal Treasurer in Panabo, and all the banks in said municipality officially certified and conveyed that no deposit of such amount was made by Caballero in their establishment. (Office of the Municipal Treasurer of Panabo, Davao Savings Bank, BPI Family Bank and Rural Bank of Panabo, (pages 9-12 Folio)

Respondent admitted in his Answer the consignment of P28,000.00 by Atty. Alberto Lumakang re-Civil Case No. 86-14 and asserted that the amount is intact but respondent did not divulge to complainant because of his fear that Judge Mariano C. Tupas might use.

This is preposterous because had respondent deposited the amount with the Municipal Treasurer Office or any of the banks in Panabo, he will not be liable for malversation. The amount could have been truly 'intact' rather than his self-serving assertion.

Incidentally, an order dated 17 October 1989 was issued by Judge Eugenio Valles detailed then at RTC Branch 4, Panabo, direct[ing] Caballero to come to court within five (5) days from receipt of said order and deliver the amount of P28,000.00 which he received by consignment.

Respondent failed to comply, hence a warrant of arrest was issued on 8 January 1989 for failure to obey lawful order. However, this remained unserved because of respondent's unknown whereabouts (sic) notwithstanding efforts exerted to contact him in Panabo or Pantukan, Davao."[6]

In respect of the charge of irregularities in the performance of duties, the Investigating Judge found that respondent Caballero had converted to his personal use property levied upon by the Regional Trial Court:

"Bonifacio Sevilla, process server of RTC Dr. 4, Panabo, testified and belied Caballero's allegation that the blue Volkswagen car he was using is owned by his brother, Atty. Jose Caballero. The plate number thereof is LBJ-344, while the Volks (sic) on levy has Plate No. LAM-453. The latter was actually converted for the personal use of respondent Caballero."[7]

Respondent contended that the blue Volkswagen car he had subjected to his personal use, was not property in

custodia legis, but rather had been borrowed by him from his brother. Witness Bonifacio Sevilla demolished this defense when he testified that there were two (2) blue Volkswagen cars, one being the vehicle under levy and appropriated by respondent to his own use, and another being owned by respondent's brother --

"Q. In this picture here of a blue Volkswagen (sic), the Plate No. is LBJ-344. I will show you Exhibit G. page 40 of the records, a picture of a blue Volkswagen (sic) with Plate No. LBJ-344, is this the same Volkswagen subject of this case?

A. This is not the same, Sir.

Q. Why do you say it is not the same?

A. The Plate number is different.

Q. What is the Plate number in issue?

A. Plate No. LAM-453.

Q. What is the plate number in the picture attached to the records?

A. LBJ-334.

Q. Who owns that Volkswagen (sic) with Plate No. LAM-453?

A. If I remember right, it was Feliciano Angeles."[8] (Underscoring supplied)

As to the charge of gambling, the Investigating Judge found that respondent had indeed expended substantial amounts of money in gambling:

"Lazaro Guinto, testified that he and respondent used to play mahjong together betting P50.00-P100.00 per game.

Jose Gonzales, declared that respondent Caballero plays mahjong with Larry Guinto, Leonie Padilla, and Solomon Amit. They bet from P300-P500 per game. Only those whose capital is not less than P3,000.00 can play with them. Caballero was playing often with this group.

Gonzales, continued that respondent goes to Panabo Gallera on Sundays for cockfights. He sat at the arena where big bettors occupy said space. Respondent stays from 4 to 5 hours in the cockpit and usually attended cock derbies. He bets not less than P500.00.

Pepito Talisic, declared that respondent was his avid customer in the purchase of ticket in the Last 2. This game is determined on the first price winning number of the Philippine Sweepstake Charity Draw every week. The last 2 digits of the of that first price is winning number that wins in the Last 2 number game. He bets not less than P200.00 weekly maintaining No. 19 for eight (8) months."[9]

Lastly, the Investigating Judge found the charge of extortion sufficiently substantiated:

"Virgilio Silvano testified that he has a case in RTC Br. 4-87-25, Pelagia Navarez v. Virgilio Silvano. Subject involves Isuzu PUJ. When he went to court on March 23, 1988, respondent was in court, the judge was absent. Knowing about his purpose that he wants to take his jeep respondent asked for P8,000.00 Silvano said he does not have the amount but only P2,000.00. Respondent called him at the corner of the court and demanded P2,000.00 which he gave. This was confirmed by another witness Ricardo Sevilieno that, respondent surreptitiously pocketed the P2,000.00 given by Silvano."[10]

From the foregoing, the Investigating Judge drew the following conclusions:

"1. The evidence adduced conclusively established that respondent, malversed and misappropriated the

amount[s] of P28,000.00 and P30,000.00[11] consigned to court by Atty. Alberto Lumakang and OIC Mayor Jose Cafe of Panabo, Davao respectively. Unauthorized withdrawals were made from these funds which were in custodia legis through the anomalous and illegal sanction of respondent.

2. There was irregular performance of his duties while OIC Clerk of Court of RTC of Br. 4 Panabo when he appropriated Volkswagen car with Plate No. LAM-453 which was the subject of levy hence in custodia legis.

3. He gambled and indulged in "high bettings" for mahjong from P300-500 per game playing for long hours likewise in cockfights he regularly goes to Panabo Gallera and during derbies and bet high as P500.00 per game. Also he was deeply engrossed in betting in the numbers game called Last 2 for eight (8) months betting weekly of not less than P200.00 maintaining No. 19.

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5. He had extorted money [in the amount] of P2,000.00 from a farmer and litigant in Civil Case No. 87-25 pending in RTC Panabo.

All these facts were duly established through preponderance of evidence adduced and established in the investigation conducted on 11 October 1990 and 16 October 1990."[12]

After careful examination of the records of the case and of the report of the Investigating Judge, the Court considers that there are more than sufficient grounds for imposition of the recommended administrative sanction against respondent Leo R. Caballero.

The Court held in *Ancheta v. Hilario*,[13] that where a respondent admits receipt of the money but fails to return the same, a prima facie case of malversation is established. Respondent Caballero, therefore, cannot rely on his own assertion that the amount delivered to him remains "intact." The Court further held in *Ancheta v. Hilario*, that misappropriation constitutes gross dishonesty and the guilty civil servant may be dismissed from the service:

"Whatever may have been respondent's dire personal needs and those of his family cannot justify his condemnable act of misappropriating for his personal use the funds collected by him in trust on behalf of the complainants as judgment creditors. His conduct constitutes gross dishonesty which renders him unfit to hold a responsible position in the judicial branch of the government and betrays the people's faith and trust in the courts for the redress of their grievances (*Abejaron v. Panes*, 84 SCRA 494)." [14] (Underscoring supplied)

The charge of malversation of funds consigned to the Regional Trial Court by itself, if duly proven, is sufficient to sustain the Investigating Judge's recommendation that respondent be dismissed from the public service.

Moreover, respondent's failure to deposit the amounts consigned with the municipal treasurer is also a violation of Supreme Court Circular No. 5, Series of 1982, which states that "(a)ll collections of funds of a fiduciary character including rental deposits shall be deposited immediately by the Clerk of Court concerned upon receipt thereof with the City, Municipal or Provincial Treasurer where his court is located."

In respect of the charges of extorting money from litigants in cases pending before the Regional Trial Court and of converting property in custodia legis to his personal use, which charges were proven before the Investigating Judge, the Court considers that respondent's acts constituted dishonesty and misconduct in office. The affidavits presented by respondent which had been executed by two (2) lawyers to the effect that they were not aware of any instance where respondent Caballero had extorted money from parties litigant, cannot overcome the positive testimony to the contrary given by complainant's two (2) witnesses.[15] In Civil Service Commission Memorandum Circular No. 30, Series of 1989, dishonesty and gross misconduct are classified as grave offenses warranting dismissal, even if committed for the first time.

We do not think it necessary to deal with the charge of gambling, save to note that under Section 23 of Rule XIV,

Implementing Rules of the Administrative Code of 1987 issued by the Civil Service Commission, gambling prohibited by law, though a "light offense," is punishable by dismissal if committed for the third time.

In fine, we find respondent Caballero guilty of gross dishonesty and gross misconduct in office and, accordingly, hold that he should be dismissed from the service. That respondent has failed to appear before the Investigating Judge, after filing his Answer, only reinforces the Court's conviction of his guilt.

WHEREFORE, respondent Leo R. Caballero is hereby DISMISSED from the government service, with forfeiture of all retirement benefits he might be entitled to, including the money value of accrued leave credits. In addition, respondent is hereby DISQUALIFIED from appointment to any position in any government agency or instrumentality, including government-owned and controlled corporations.

A copy of this Resolution shall be forwarded to the Department of Justice for investigation of possible criminal liability of respondent should he be subsequently found.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quason, JJ., concur.

[1] Answer, p. 1; Rollo, p. 27.

[2] TSN, 11 October 1990, p. 6.

[3] TSN, 16 October 1990, p. 4.

[4] Rollo, p. 86.

[5] 89 SCRA 475 (1979).

[6] Report, p. 2.

[7] Id., p. 3.

[8] TSN, 16 October 1990, p. 36.

[9] Report, pp. 3-4.

[10] Id., p. 5.

[11] The charge of malversing the amount of P30,000.00 was made only in the additional complaint dated 27 March 1990. Thus, even if the Investigating Judge found evidence to support this allegation, said charge in the additional complaint should not be considered in the disposition of this case for reasons discussed in page 4 of this Resolution.

[12] Id.

[13] 96 SCRA 62 (1980).

[14] 96 SCRA at 67.

[15] See *People v. Adap*, 89 SCRA 413 (1990).

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