

ENRIQUITO CABILAO AND RONALD MART DAYOT PETITIONERS, VS. JUDGE AGUSTIN T. SARDIDO, RESPONDENT.*A.M. No. MTJ-93-818. July 14, 1995*

Ponente: KAPUNAN, J.

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Complainants Enriqueito Cabilao and Roland Mart Dayot are the Area Sales Director and Territory Sales Manager, respectively for Southeastern Mindanao of La Tondena, Inc.[1] In the early afternoon of November 27, 1992, complainants were in the courtroom of respondent Municipal Circuit Trial Court (MCTC) Judge Agustin C. Sardido in Norala, T'boli, South Cotabato to attend a hearing in Criminal Case No. 1857 for Grave Oral Defamation filed against Cabilao by Rolando Parcon an employee of La Tondena, Inc., who had earlier been dismissed by the said company for dishonesty.

Prior to the start of the court session, respondent Judge spoke to Cabilao, asking why the parties in the oral defamation case could not settle the same amicably.[2] Cabilao replied that he could not take up the matter because his counsel was not around. Apart from this exchange related to the defamation case, the judge brought up no other matters concerning herein complainants.[3]

When the case was called, Cabilao requested for postponement of the hearing, which respondent Judge granted. On their way out of the courtroom, however, complainants Cabilao and Dayot were served with a Warrant of Arrest issued on the same day by respondent Judge in connection with a another complaint for Robbery against them, docketed as Criminal Case No. 1917.[4] The case was filed by the same complainant in the oral defamation case which was the subject of that afternoon's proceedings against them. Facing immediate detention if they could not furnish bail in the amount of P16,000.00, complainants requested that they be allowed to go to their residence in Tacurong, Sultan Kudarat, in order to obtain the amount required for the bond. After some difficulty, complainants were able to borrow the amount needed for cash bond, thereby avoiding the possibility of a long weekend in jail, the following Monday, November 30, 1992, being a public holiday.

Assailing the legality and propriety of the warrant of arrest issued against them by respondent judge, complainants, on May 24, 1993 filed a sworn complaint with this court[5] accusing respondent judge with "grave ignorance of the law, gross misconduct and abuse of discretion in the performance of his functions in Criminal Case No. 1917 entitled People vs. Enriqueito Cabilao and Rolando Mart Dayot for Robbery." They alleged that:

17. Respondent judge issued the Warrant of Arrest against us on November 27, 1992 knowing that the complainants would be at his courtroom in the afternoon of said date. Yet he never gave the Complainants a hint that there was a warrant of arrest issued against them. Respondent Judge should have furnished first the Complainants herein copies of the Complaint and affidavit of Rolando Parcon, and ordered them to file their counter-affidavits to determine whether a probable cause exists. The serving of the Warrant of Arrest was calculated to prevent the Complainants from posting a bond as it was served on them already at about 2:30 o'clock P.M., when the time element was already so limited, considering that the Complainant are not residents of the

place. Certified true copies of the Criminal Complaint in Criminal Case No. 1917; Warrant of Arrest issued against Enriquito Cabilao; Ronald Mart Dayot; Jose Estafia; Order of Refrain from Arrest; Order of Provisional Release; and Supplemental Affidavit of Rolando Parcon are hereto attached as Annexes 'A'; 'A-1', 'B', 'C', 'D' and 'E', respectively;

18. The circumstances surrounding Complainants' arrest and the actuations of Respondent Judge and Rolando Parcon, complainant in Criminal Case No. 1917 and a resident of Norala, South Cotabato, clearly reveal their scheme to harass the Complainants and cause serious anxiety and irreparable damage to them;

19. Complainants also discovered that the Respondent Judge, contrary to the certification appearing on the second page of the Complaint (Annex 'A-1') of Criminal Case No. 1917, to wit:

CERTIFICATION

This is to certify that a preliminary examination has been conducted on this case having examined the complainant and his witnesses under oath and that it appears that a probable cause exist to warrant the issuance of Order for the arrest of the accused.

(SGD) AGUSTIN T. SARDINO

Municipal Circuit

Trial Judge

RECEIVED and filed this 27th day of November 1992 at Norala, South Cotabato.

which he signed, never conducted the required preliminary examination in writing and under oath of the complainant in the form of searching questions and answers, to determine whether a probable cause exists and a necessity of placing the respondent (Complainants herein) under immediate custody in order not to frustrate the ends of justice (Sec. 6 (6), Rule 112 of the Rules on Criminal Procedural). A copy of the Certification issued by the Clerk of Court of the Municipal Trial Court of Norala, South Cotabato, Fe Placer Soriano, that no written records of preliminary examination in the form of searching questions and answers was conducted by Hon. Judge Agustin T. Sardido in Criminal Case No. 1917, entitled People of the Philippine versus Enriquito Cabilao, Ronald Mart Dayot and Jose Estafia, for Robbery, is hereto attached as Annex 'F'. In fact it has been the practice of the respondent Judge not to conduct preliminary examination in the form of searching questions and answers in other criminal cases.

Responding to the complaint filed against him, respondent in his COMMENT[6] averred that:

In the conduct of the preliminary examination undersigned usually adopts the questions and answers form (sic) prepared by the police investigator because for the undersigned to comply with the procedural requirements of reducing into his own handwriting in all cases filed would be physically impossible, considering that many cases coming up in the three Municipal Circuit Trial Courts undersigned is handles in an acting capacity, plus his regular Municipal Trial Court in Koronadal, the capital town of South Cotabato.[7]

Additionally, respondent judge claims that although there were no searching questions and answers in writing he nevertheless conducted the preliminary examination twice, on November 26 and 27, 1992, and that the warrant of arrest was issued by him only after he was sufficiently convinced of the existence of probable cause for the crime of Robbery against the complainants.[8]

Acting on the complaint, the Office of the Court Administrator on 25 March 1994 recommended to this Court that the respondent judge be fined in the amount of five thousand pesos with a stern warning that the commission of the same or similar acts be dealt with more severely.[9] However, in our Resolution dated June 13, 1994, we

referred the instant case to Judge Jose L. Orlino, Executive Judge of the Regional Trial Court of General Santos City, South Cotabato for further investigation, report and recommendation.

During the course of the investigation, complainants, through counsel informed the investigating judge of their desire not to attend the investigations and to withdraw their complaint against respondent judge. They explained that the nature of their work compelled them to be in different places in southeastern Mindanao, which made it difficult for them to attend the hearings. Following completion of his investigation on the matter Judge Orlino submitted his recommendation, part of which is quoted hereunder:

Respondent Judge Sardido was candid to admit that he did not do his examination in writing in the form of searching questions and answers, when he conducted the preliminary examination. He reasoned that before he issued the warrant of arrest of Cabilao and Dayot he "had conducted the preliminary examination twice and only when he was satisfied of the existence of a probable cause for the crime of robbery against the xxx complainants that a warrant for their arrest was issued. xxx.

He said that he had to abbreviate the preliminary investigations by conducting them orally because he was during those times the Acting Municipal Trial Court of three (3) Municipal Trial Court (sic), covering seven (7) towns, aside from being the regulate Municipal Trial Court Judge for the Municipal Trial Court of Koronadal, the capital town of South Cotabato. He said that there were times that he would go to Lake Sebu (a mountain town) in the early morning, then go down to Surallah, and from Surallah to his official station in Koronadal, on the same day.

Both the investigating judge and the Office of the Court Administrator agree that respondent judge be absolved of the charges against him with a warning that commission of the same act in the future will merit a severe penalty. While we adopt much of the factual conclusions made by the investigating judge, we are of the opinion that respondent judge should not be let off lightly with a mere slap in the wrist. Desistance made by the complainants in the instant case is of no moment as it is settled that in administrative cases of this nature, the Court may proceed with its investigation and mete the appropriate penalties against erring officers of the court.

The factual circumstances surrounding the issuance of the questioned warrant of arrest in the case at bench merit this Court's closer scrutiny because the deprivation of a citizen's liberty through the coercive process of a warrant of arrest is not a matter which courts should deal with casually. Any wanton disregard of the carefully-wrought out processes established pursuant to the Constitution's provisions on search warrants and warrants of arrest[10] is a serious matter primarily because its effects on the individual wrongly-detained are virtually irremediable.

We have held, in a number of cases before this Court, that the procedure described in Section 6 of Rule 112 is mandatory because failure to follow the same would amount to a denial of due process.[11] With respect to the issuance by inferior courts of warrants of arrest, it is necessary that the judge be satisfied that probable cause exists: 1) through an examination under oath and in writing of the complainant and his witnesses; which examination should be 2) in the form of searching questions and answers. This rule is not merely a procedural but a substantive rule because it gives flesh to two of the most sacrosanct guarantees found in the fundamental law: the guarantee against unreasonable searches and seizures and the due process requirement.

In the case at bench, respondent judge does not deny that he failed to meet these requirements. He however makes the lame excuse that he was tied up with other matters allegedly because of overwork, which supposedly led him to gloss over the conditions set for the issuance of a warrant of arrest in Rule 112, Section 6(b). The manner of the warrant's issuance, however, appears so irregular and highly suspicious that it would be difficult for us to give credence to his contention that pressure of work left him with no recourse but to conduct his preliminary investigation on the matter, in violation of the provisions of the Rules of Court. As the facts reveal, while the criminal complaint for Robbery was filed before his court only on November 27, 1992, he claims to have

conducted a preliminary investigation on the matter on November 26, 1992 a day before the complaint was filed.[12] When he spoke to complainants Cabildo and Dayot prior to the hearing of November 27, 1992 about the possibility of amicably settling the Oral Defamation case, he gave absolutely no intimation about the complaint for Robbery against herein complainants nor about their impending arrest on that same afternoon while they were on their way out of his courtroom.[13] The warrant served on the complainants that afternoon was therefore virtually an "ambush" warrant of arrest which would have afforded complainants no opportunity to respond by filing a bail bond were it not for complainant's doggedness and tenacity in coming up with the appropriate amount to stave-off a long weekend in jail. As the facts reveal, and the investigating judge himself found,[14] the warrant was unnecessary under the circumstances, because both complainants dutifully attended court proceedings in connection with the defamation case, and were present whenever the court required their presence.

These circumstances offer no conclusive evidence of wrong doing on the part of the respondent judge. But taken with respondent's wanton disregard of the Rules of Court in determining probable cause in respect to the issuance of warrants of arrest, however, a finding that respondent had acted with grave abuse of discretion when he issued the questioned warrant would be much more in tune with the facts and circumstances of this case. His admission that he ignored the requirements of Rule 112 Section 6(b) because of pressure of work is, in the eyes of this court, a mere afterthought which would not absolve him from a finding that he was grossly ignorant of the law in issuing the search warrant in the case at bench. To let respondent judge off lightly would be to send the wrong signals in regard to the care which must be observed in the issuance of warrants of arrest.

Finally, as to complainants' contention that they were arrested without a copy of Parcon's affidavit being supplied them without giving complainants the opportunity to submit their counter-affidavits, this court has held in *Pangandaman vs. Casar*[15] that:

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 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.

In *Pangandaman*[16] we likewise reiterated the following:

The rule on arrest after preliminary examination has, of course, been modified somewhat since the occurrence of the facts upon which *Mayuga* was decided, but not to abrogate the authority of the investigating judge to order such arrest, and only to prescribe the requirement that before he may do so, he must examine the witnesses to the complaint, the examination under oath and reduced to writing in the form of searching questions and answers. This modification was introduced by Republic Act 3888, approved June 22, 1963, amending Section 87 of the Judiciary Act of 1948, and the 'searching questions and answers' requirement is incorporated in the present Section 6 of Rule 112 already quoted.

WHEREFORE, finding that respondent judge acted with gross ignorance of the law and with grave abuse of discretion in the performance of his functions, a fine of P5,000.00 is hereby imposed upon him with a STERN WARNING that commission of the same or similar acts shall be dealt with severely by this court.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Rollo, p. 2.

[2] Rollo, p. 79.

[3] Id.

[4] Rollo. p. 80.

[5] Rollo, pp. 2-8.

[6] Rollo, pp. 22-30.

[7] Rollo, pp. 26-27.

[8] Rollo. p. 28.

[9] Rollo, p. 41.

[10] Article III of the 1987 Constitution states:

Sec. 2 The right of the people to be secure in their persons, houses papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable and no search warrant nor warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[11] Pangandaman vs. Casar, 159 SCRA 599, 606 (1988), Marinas vs Siochi, 104 SCRA 423 (1981); Tabil vs. Ong, 91 SCRA 451(1971); Banzon vs Cabato 64 SCRA 419 (1968); People vs Paras, 56 SCRA 248(1974); People vs Oandasan, 25 SCRA 277(1968); Luna vs Plaza, 26 SCRA 311(1968).

[12] Rollo, p. 36., See Annex "A" on Rollo, p. 9.

[13] Rollo, p. 79-80.

[14] Rollo, p. 98.

[15] Pangandaman, supra note 6.

[16] Id.

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