ATTY. NESCITO C. HILARIO, COMPLAINANT, VS. JUDGE ROMEO A. QUILANTANG, PRESIDING JUDGE, MUNICIPAL TRIAL COURT, OBANDO, BULACAN, RESPONDENT.

A.M. No. MTJ-01-1371 (Formerly OCA IPI No. 96-136-MTJ). September 20, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an administrative complaint for gross neglect and dereliction of duty filed by Atty. Nescito C. Hilario, chairman of the People's Law Enforcement Board (PLEB) of Obando, Bulacan, against Judge Romeo A. Quilantang, presiding judge of the Municipal Trial Court, Obando, Bulacan. The complaint stemmed from respondent judge's alleged deliberate refusal to conduct a preliminary investigation of the charges of grave threats and illegal possession of firearms lodged against a certain Reynaldo S. Marquez.

In an affidavit filed before the PLEB-Obando on October 19, 1995,[1] Jonathan dela Cruz narrated that he was inside the Obando market at around 8:00 P.M. of June 22, 1995, when he was accosted by Reynaldo S. Marquez, who appeared to be drunk. Marquez pulled out a gun, cocked it and pointed it at dela Cruz's chest. A certain Ricky Contreras arrived and restrained Marquez. Dela Cruz then ran to the house of John Castillo and asked for help. Dela Cruz and Castillo went back separately to the market. Castillo called for help on his radio and Marquez was thereafter arrested by the police. A gun was found in his possession.[2]

Complaints for grave threats and illegal possession of firearms and ammunition were filed against Marquez before the Municipal Trial Court of Obando, Bulacan. These were docketed as Criminal Cases No. 4322 and 4323, respectively. Respondent judge set the submission of affidavits and examination of witnesses for July 3, 1995.

Complainant alleges, referring to Dela Cruz's affidavit, that on July 3, 1995, Dela Cruz was brought to the police station by someone who he thought was a policeman and was given P2,000.00 and was told that if he did not accept the money, Marquez might retaliate against him. Dela Cruz was then brought to the office of respondent judge, where the latter urged him to drop the case against Marquez. Dela Cruz was given P1,000.00 more and was asked to sign a document, written in English, that turned out to be an affidavit of desistance.

Dela Cruz claimed that he was unaware of the contents of the document since they were not explained to him. Complainant points out that Dela Cruz does not understand English.

By virtue of the affidavit of desistance, respondent judge dismissed the case for grave threats in an order dated July 3, 1995.[3]As to Criminal Case No. 4323, respondent judge issued on the same day, July 3, 1995 an order stating therein that the evidence against the accused Marquez was weak. Consequently, he ordered the release of Marquez from police custody.

It appears that the three policemen who arrested the accused executed an affidavit[4] also on July 3, 1995, subscribed and sworn to before respondent judge, stating that the gun was found not on the person of the accused but inside the tricycle on which he was leaning at the time. Nevertheless, respondent judge ordered that the gun be

sent to the PNP Firearms and Explosives Division to ascertain whether it was licensed in the name of the accused.

However, complainant claims that records at the PNP-FED showed that the gun was never sent or brought there for examination. He also asserts that had respondent judge asked searching questions as required by law, he could have easily determined the existence of probable cause to indict Marquez for violation of P.D. 1866, considering that a COMELEC gun ban was in effect at that time.

On October 19, 1995, Dela Cruz and John Castillo filed an administrative complaint before the PLEB-Obando against the Obando Chief of Police as well as three of his men, in connection with the dropping of the charges against Marquez.[5] The policemen countered that no irregularity can be attributed against them since the criminal cases had already been dismissed by respondent judge.

Complainant asserts that in previous cases, respondent judge would order the production of the police blotter when there was a conflict between the sworn complaint of police officials and the supporting affidavits. Complainant wonders why such usual practice was not followed in the cases against Marquez. Instead, respondent judge took an active part in causing the dismissal of the complaints. He avers that respondent judge intentionally and maliciously refrained from conducting the requisite preliminary investigation of the cases lodged against Marquez, in violation of Article 208 of the Revised Penal Code.[6]

Complainant prays that respondent judge be dismissed from the service.

For his part, respondent judge contends that it was never his policy to initiate, interfere with, or encourage extrajudicial settlement of criminal cases lodged in his sala because this is against law and public policy. He asserts that he met Dela Cruz only on July 3, 1995, the date when the latter subscribed his affidavit of desistance before respondent judge. Respondent judge argues that he asked Dela Cruz if he was intimidated, harassed, or paid to sign the affidavit and Dela Cruz replied that he was not.

Respondent judge contends that the crime of grave threats falls under the Rule of Summary Procedure, and the dismissal of the charge was consistent with Section 10 of said rule.[7]

As regards complainant's charge that there are discrepancies between the police blotter and the affidavit later on executed by the policemen who apprehended Marquez, respondent judge argues that entries in a police blotter are not given probative value for being usually inaccurate.

In his reply, complainant alleges that there were irregularities in the filing and investigation of the criminal complaints: (1) the two cases were filed on different dates and the complaints were not properly accomplished;[8] (2) the statement of Dela Cruz, written in Tagalog, was not sworn to but the English affidavit of desistance was; (3) the affidavit of desistance was written in English but Dela Cruz could not understand this language. Complainant alleges that it was respondent judge who actually prepared the affidavit of desistance, judging from the language used; (4) respondent judge's copy of the policemen's affidavit concerning the location of the seized gun bore a different date from the copy obtained by complainant from the Office of the Provincial Prosecutor of Bulacan, which according to complainant is a sign of forgery.

Complainant also asserts that Marquez' possession of a gun during an election gun ban is a violation of elections laws, and respondent judge did not have jurisdiction to conduct a preliminary investigation of such violation. He also points out that respondent judge refused to inhibit himself from hearing a separate perjury case filed against one of the policemen who executed an affidavit stating a different version of the discovery of the gun.

In his rejoinder, respondent judge denies all the allegations of complainant. He maintains that it is the police that prepares and files criminal complaints. He adds that the date of filing and the date of subscribing to the complaint

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would be different since subscribing to the complaint is done during the preliminary investigation, which is after the filing of the complaint. He also asserts that the complaints filed by the police did not contain any allegation that the accused had been charged with violation of election laws, and he had no jurisdiction to amend or supplement the complaints. He could only act on them and forward his resolution to the office of the public prosecutor.

As for the perjury case, respondent judge asserts that complainant did not have the prior authority of the public prosecutor to appear in the case. Moreover, he points out that complainant did not present his client Dela Cruz in court, nor did he show proof of the damage suffered by the latter.

Replying to respondent judge's rejoinder, complainant contends that respondent should have dismissed the complaint for illegal possession of firearm outright since at the time it was committed, there was an election gun ban in force. It is the COMELEC that has jurisdiction over the case. Complainant also denies that he did not have the authority of the public prosecutor to appear in the perjury case, and wonders why respondent judge wanted his client to appear during a hearing on a motion to inhibit.

In a resolution dated July 17, 2000, the Court referred this matter to Executive Judge Danilo A. Manalastas of the Regional Trial Court of Malolos, Bulacan,[9] for investigation, report, and recommendation.

In his report to the OCA dated January 4, 2001, Judge Manalastas recommended that respondent judge be reprimanded for his failure to perform his duties relative to the conduct of preliminary investigation, and admonished to be more conscientious in the discharge of his responsibilities.

As regards the dismissal of the complaint for grave threats, Judge Manalastas pointed out that the crime is within the exclusive original jurisdiction of the MTC and falls under the Revised Rule of Summary Procedure. Under said rule, a judge may dismiss a complaint outright if the accusation is patently without merit, and to order the release of an accused if in custody. Judge Manalastas observed that it was difficult to determine the truth of the claim that Dela Cruz was pressured into signing the affidavit of desistance since he was not presented during the investigation of this administrative matter. Hence, whatever conclusions may be drawn from Dela Cruz's claim of pressure would be based on speculation; this would be unfair to respondent judge.

Judge Manalastas also found from respondent judge's testimony that when Dela Cruz signed the affidavit of desistance, he was accompanied by his employer Rodrigo Manalaysay and a certain Francisco Raymundo who appeared to represent the accused Marquez. Judge Manalastas opined that it was likely that Dela Cruz had agreed to settle the case through the efforts of Manalaysay and Raymundo. There was no need for any more pressure from respondent judge who, in the first place, was not expected to impede any amicable settlement between the parties.[10]

However, as regards the complaint for illegal possession of firearm, Judge Manalastas noted that respondent judge did not conduct a preliminary investigation nor transmit a resolution on the case to the Office of the Public Prosecutor, as required by the Revised Rules of Court. Instead, he peremptorily ordered the release of the accused on the basis of his swift determination that the evidence was weak. Respondent judge ignored the conflicting reports of the police regarding the place of discovery of the gun. Judge Manalastas also observed that respondent judge forwarded, albeit delayed, the records of the case to the Office of the Provincial Prosecutor of Bulacan without waiting for the certification of the PNP-FED on whether or not the gun was licensed in accused's name. Such certification is essential to the prosecution of the case for illegal possession of firearm, and failure to submit the same would render it difficult for the prosecutor to indict the accused for the offense. These circumstances, according to Judge Manalastas, tend to show that respondent judge exhibited undue leniency towards the accused.

The OCA, in a report to this Court dated March 12, 2001, recommended the adoption of the findings and recommendation of Judge Manalastas, with the modification that respondent judge be fined in the amount of P20,000.00 and warned that a repetition of a similar act will be severely dealt with.

After examining the records of this case, we find no reason to disagree with the findings of Judge Manalastas and the OCA.

As found by Judge Manalastas, the crime of grave threats in this case is cognizable by the MTC and respondent judge properly exercised jurisdiction over the complaint therefor.

The penalty prescribed by the Revised Penal Code for the offense is arresto mayor plus a fine, thus placing it within the coverage of the Revised Rule on Summary Procedure. Under Section 12 of said rule, the court may dismiss the complaint outright for being patently without basis or merit and order the release of the accused if in custody. In this case, respondent judge thought it wise to dismiss the complaint owing to the affidavit of desistance executed by the complainant. We agree with Judge Manalastas that the failure of Dela Cruz to appear and testify at the hearing of this administrative case made it extremely difficult, if not downright impossible, to determine the truth of the allegation that the affidavit of desistance was procured through undue pressure. Only Dela Cruz could have testified in this regard, but he was unfortunately absent during the hearings. Without any clear evidence of wrongdoing on the part of respondent judge, we cannot fault him for dismissing the complaint particularly since his action is sanctioned by the rules.

As to the complaint for illegal possession of firearms, the case is cognizable by the Regional Trial Court. The duty of respondent judge was to conduct a preliminary investigation and thereafter to transmit his findings to the Office of the Public Prosecutor for further action, as provided under Rule 112, Sections 3 and 5, of the Rules of Criminal Procedure then in force.[11] We find from the records that the complaint for illegal possession of firearms was filed on June 26, 1995.[12] Respondent judge determined that the evidence of the prosecution was weak and ordered the release of the accused on July 3, 1995,[13] or seven days later.

As observed by Judge Manalastas:

> "...respondent judge should have conducted a preliminary investigation in accordance with Sections 3 and 5, Rule 112 of the Revised Rules of Court, but he did not; instead, he peremptorily ordered the release of accused Reynaldo Marquez on the basis of his abrupt determination as contained in his order dated July 3, 1995, "that the evidence against the accused is weak taking into account that the gun was found not in his possession but only in the tricycle near him." While it is true that he did not dismiss the criminal complaint, the fact remains that no preliminary investigation in accordance with the procedure specified in Section 3 of Rule 112 of the Revised Rules of Court was conducted by him, and neither did he prepare and transmit a resolution on the case to the Office of the Public Prosecutor of Bulacan as required in Section 5 of said Rule. The complete reliance of respondent judge on the joint affidavit of the three (3) Obando policemen alleging that the subject gun was found by them inside a tricycle on which the accused was leaning on and in using the same as basis for his finding that the case against the accused is weak and in ordering his release are unwarranted as he in effect grossly ignored the report contained in the Obando police blotter which was entered by SPO1 Froilan S. Bautista on June 22, 1995, as well as the Report to the PNP Provincial District Director dated June 23, 1995, which categorically state that the subject gun was found in the possession of and confiscated from accused Reynaldo Marquez..."[14]

Moreover, respondent judge transmitted the report of his findings to the Office of the Public Prosecutor on October 16, 1995,[15] or more than three months after he made his determination that the evidence against the accused was weak. This is clearly beyond the ten-day period prescribed by the Rules of Court.[16] Respondent judge evidently failed to exercise the diligence required of him under the circumstances of this case.

Judge Manalastas recommends that respondent judge be reprimanded; the OCA agrees and recommends further that respondent judge be fined in the amount of P20,000.00. We agree with these recommendations, except as to the amount of the fine. Given the circumstances of this case, we deem a fine of P10,000.00 to be sufficient.

WHEREFORE, respondent Judge Romeo A. Quilantang, presiding judge, Municipal Trial Court, Obando, Bulacan, is found GUILTY of dereliction, neglect and undue delay in the performance of duty. He is ordered to pay a FINE of P10,000.00, with a WARNING that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 14-15.

[2] See spot report, sworn complaint, and excerpts from police blotter. Rollo, pp. 20, 24, 25.

[3] Rollo, p. 22.

[4] Id. at 29.

[5] Only the charge for grave threats was actually dismissed by respondent judge. The records of the preliminary investigation of the case for illegal possession of firearm and ammunition were forwarded to the Office of the Provincial Prosecutor for appropriate action.

[6] ART. 208. Prosecution of offenses; negligence and tolerance. -- The penalty of prision correccional in its minimum period and suspension shall be imposed upon any public officers, or officer of the law, who, in dereliction of the duties of his office, shall maliciously refrain from instituting prosecution for the punishment of violators of the law, or shall tolerate the commission of offenses.

[7] Respondent quotes the provision of the Rule on Summary Procedure that was in force before it was amended by this Court effective November 15, 1991. The quoted provision was no longer in force when the subject criminal cases were filed, but the old provision was substantially the same as the new rule, now Section 12 of the Revised Rule on Summary Procedure:

SEC. 12. Duty of court. --

(a) If commenced by complaint. -- On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss the case outright for being patently without basis or merit and order the release of the accused if in custody.

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[8] Complainant asserts that the complaint for grave threats was not noted by the chief of police nor sworn to before respondent judge, unlike the complaint for illegal possession of firearms and ammunition.

[9] This matter was first referred to Judge Crisanto C. Concepcion, RTC-Malolos, Branch 12, on September 9, 1998, who was the executive judge at that time. Judge Concepcion requested reassignment of the case when a new executive judge was appointed, and informed the Court that he was also respondent in another administrative case filed by herein complainant. Thus, he sought to be excused from investigating the case to avoid any suspicion of bias and partiality.

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[10] Report of Executive Judge Danilo A. Manalastas, RTC, Obando, Bulacan, addressed to Chief Justice Hilario G. Davide, Jr. through then Court Administrator Alfredo Benipayo, p. 12.

[11] Amended December 1, 2000.

[12] Rollo, p. 24.

[13] Id. at 22.

[14] Supra, note 10.

[15] Rollo, p. 56.

[16] Rule 112, Section 5 of the rules then in force provided:

"SEC. 5. Duty of investigating judge. -- Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, stating briefly the findings of facts and the law supporting his action, together with the entire records of the case..."

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