

JUDGE BERNARDO P. PARDO, PETITIONER, VS. ANTONIO D. VELASCO, DEPUTY SHERIFF, RESPONDENT.

A.M. No. P-90-408. August 07, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

These are consolidated cases filed against Deputy Sheriff Antonio Velasco, RTC, Branch 47, Manila.

Administrative Matter No. P-90-408 was filed on February 2, 1990. Complainant charged respondent for unbecoming conduct prejudicial to the service by reason of prolonged absence without leave, grave abuse of authority, extortion or bribery and contempt of court.

Complainant alleged that respondent has been reporting at RTC, Branch 14 without a detail order and inspite of the fact that his appointment thereat cannot be given due course because there is an incumbent deputy sheriff at Branch 14. It was alleged further that in Civil Case No. 89-49342 entitled “Stephen J.E. Bastian v. Richard M. Houghton,” a writ of replevin was issued dated June 30, 1989 addressed to the herein respondent ordering him to seize among others, one (1) unit of motor vehicle from the defendants; that on the same day, respondent deputy sheriff seized the motor vehicle involved and other personal properties and immediately turned over its possession to plaintiff Stephen Bastian in violation of Sections 4 and 6 of Rule 60 of the Rules of Court; that as a result of this act of the respondent, the subject vehicle could not be returned to the defendants upon order of the court; and that contempt proceedings were instituted against the respondent for failure to return the seized property.

Complainant alleged further that the counsel for the plaintiff reported to him that respondent deputy sheriff demanded and was paid the sum of P10,000.00 as bribe money to carry out the seizure of the motor vehicle and its immediate turn over to the plaintiff.

On July 11, 1990 respondent Deputy Sheriff was required to comment on the letter-complaint.

In his comment, he averred that on June 30, 1989 an Order for seizure of the personal properties was issued by the Presiding Judge of RTC, Branch 47 and on the same day, he in the presence of the counsel for the plaintiff, Atty. Pablo M. Taguines and plaintiff Stephen Bastian enforced the writ and seized one (1) unit of motor vehicle, among others, belonging to the defendants; that at the behest of the plaintiff’s counsel, and considering that the Sheriff’s Office of Manila does not have a storage space for seized properties, he turned over the properties to plaintiff’s counsel after the latter executed an undertaking, Annex “C” of comment, which states:

“UNDERTAKING

UNDERSIGNED COUNSEL OF THE PLAINTIFF DO HEREBY UNDERTAKES THE CUSTODY AND SAFEKEEPING OF THE PROPERTIES SEIZED BY VIRTUE OF AN ORDER FOR THE SEIZURE OF PERSONAL PROPERTIES ISSUED IN CIVIL CASE 89-49342 AND TO DELIVER THE SAME OF THE COURT UPON ITS ORDER.

MANILA, JUNE 30, 1989.

(Sgd.) Illegible

ATTY. PABLO M. TAGUINES

COUNSEL FOR THE PLAINTIFF”

Respondent contended that the turnover of the said property cannot be regarded as a grave abuse of authority because it was by virtue of a writ and that the turnover to Atty. Taguines was covered by an undertaking. Besides, he claimed that his criminal culpability in turning over the seized properties to plaintiff’s counsel was dismissed by the Ombudsman in a resolution dated May 2, 1990 (Annex “N” of comment) while the contempt proceedings against him and Atty. Taguines are on appeal.

Likewise, he denied the charge of bribery or extortion for lack of sufficient basis, and claimed that complainant should have taken down the sworn statement of Atty. Manuel Chico who allegedly reported that he (respondent) demanded the amount of P10,000.00 to carry out the seizure order. He pointed out that the records of Civil Case No. 89-49342 readily show that Atty. Chico entered his first appearance long after the seizure was enforced and therefore, he does not have personal knowledge of said alleged demand of P10,000.00 for the enforcement of the writ.

On the charge of absence without leave, respondent denied the same and claimed that from January, 1989 to June, 1990, he has been reporting for work from Branch 47 to the Office of the Clerk of Court with the approval of the Presiding Judge of Branch 47; then to Branch 14 and back to the Office of the Clerk of Court. He substantiated his claim by submitting copies of his daily time records marked as Annex “M”, “M-1” to “M-17” of his comment.

In the resolution of September 10, 1990, this case was referred to the First Vice Executive Judge, RTC, Manila for Investigation, Report and Recommendation.

Administrative Matter P-90-453 refers to the joint affidavit - complaint of Richard Houghton and Carmencita L. Houghton with the Ombudsman charging respondent Deputy Sheriff Antonio D. Velasco with gross misconduct and grave abuse of authority relative to Civil Case No. 89-49342. Pursuant to the resolution of the Ombudsman dated May 2, 1990 holding that respondent Antonio Velasco could not be prosecuted for violation of R.A. 3019 for lack of evidence and if at all, the acts complained of, may constitute as a valid ground for administrative action, the said complaint was referred to the Office of the Court Administrator for administrative action.

In a resolution of the Second Division of this Court dated September 26, 1990, the Office of the Court Administrator was required to file the necessary administrative complaint against respondent Antonio Velasco.

On November 9, 1990 respondent Velasco filed his comment on the complaint of the Court Administrator praying for the dismissal of the complaint on the ground that this instant complaint is a reiteration of a case pending with the First Division of this Court involving the same subject and the same parties.

In the resolution of the Second Division dated December 10, 1990, this case was consolidated with Adm. Matter No. P-90-408.

Judge Corona Ibay Somera, who was assigned the task of conducting an investigation on these administrative cases submitted her report dated September 9, 1991.

The Investigating Judge reported that at the scheduled hearing, complainant Judge Bernardo P. Pardo manifested that Stephen J.E. Bastian has been deported to Australia and can no longer appear to testify on the charge of indirect bribery and that he was therefore abandoning said charge. He, however, pursued the cause re: the writ of

replevin and unbecoming conduct prejudicial to the service by reason of prolonged absence.

On the charge of unbecoming conduct prejudicial to the service by reason of prolonged absence without leave, the investigating judge found that there were documentary evidence showing that from January, 1989 to June, 1990 respondent had been reporting to the Office of the Clerk of Court, then to Branch 14 and later back to the Office of the Clerk of Court, Regional Trial Court of Manila. Respondent's detail to the Office of the Clerk of Court was with approval of the Judge Lorenzo Veneracion of Branch 47 and from the Clerk of Court to Branch 14 is with the approval of Presiding Judge Inocencio D. Maliaman (Annexes "I," "J," respondents comment). All these negated the charge of prolonged absences without leave.

On the charge of grave abuse of authority and grave misconduct in the implementation of the Writ of Replevin, the reason given by the respondent in immediately delivering the seized properties to plaintiff's counsel was that the sheriff's office has no storage; that Atty. Taguines executed an undertaking that the same will be produced when required by the court was done; and that he was motivated by good intention to keep the seized personal properties from being lost or damaged.

Judge Somera was of the view that good faith and prudent judgment are not legitimate reasons to be slack in complying with Rules 4 and 6 of the Rules of Court. She concluded that respondent abused his authority to the extent of failing to do the duties imposed upon him by the rules and recommended that respondent Antonio Velasco be suspended for one month without pay.

We agree with the foregoing findings and recommendation of Judge Somera both on the charges of prolonged absence without leave and misconduct in the implementation of the Writ of Replevin but disagree with the penalty to be imposed.

The warrant among others, ordered respondent sheriff to keep the property "in your possession for five (5) days and at the expiration of said period to deliver it to x x x plaintiff." This order was not followed by respondent, who upon seizure, turned over the seized properties to the plaintiff's counsel allegedly for safekeeping. His reasons that the Sheriff's Office has no place to store the seized items and that there was an undertaking submitted by Atty. Taguines are not acceptable. Respondent as an officer of the Court is charged with certain ministerial duties which must be performed faithfully to the letter. Every provision in the Revised Rules of Court has a specific reason or objective. In this case, the purpose of the five (5) days is to give a chance to the defendant to object to the sufficiency of the bond or the surety or sureties thereon or require the return of the property by filing a counterbond. The fact that the order of the Court to re-deliver the seized properties dated August 3, 1989 was not immediately complied with goes to show that respondent's actuation was highly improper and in grave abuse of his authority, tantamount to excess of authority.

This Court, however, is not unmindful of the fact that respondent, in an effort to retrieve the properties, sent a letter dated August 4, 1989 to notify Atty. Taguines of the order for the re-delivery and directed the return of the seized properties pursuant to the latter's undertaking. It was also at respondent's instance, that a motion was filed for the issuance of an order for the re-delivery of the seized properties to the plaintiffs. Further, it appears from the records of this case that the seized motor vehicle and other personal properties were returned to the defendants finally on September 27, 1989 per acknowledgment receipt, signed by Richard and Carmencita Houghton. All of these should render less severe the sanction to be imposed upon him on account of his culpability.

ACCORDINGLY, the charge of prolonged absence without leave is **DISMISSED** but this Court finds and holds respondent Antonio Velasco liable for abuse of authority in implementing the Writ of Replevin issued in Civil Case No. 89-49342 and imposes upon him a FINE of P4,000.00 payable to this Court within thirty (30) days from notice with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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