

## **SALAM NAGA PANGADAPUN, COMPLAINANT, VS. JUDGE AMER R. IBRAHIM, RTC, BRANCH 9, MARAWI CITY, RESPONDENT.**

*A.M. No. RTJ-94-1135. January 29, 1998*

Ponente: FRANCISCO, J.

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### **FRANCISCO, J.:**

In a letter complaint addressed to the Supreme Court thru the Court Administrator, dated November 6, 1993, herein complainant Salam Naga Pangadapun charges herein respondent Judge Amer R. Ibrahim, RTC, Branch 9 of Marawi City “with gross ignorance of the law, serious misconduct and grave abuse of authority – all in violation of the law. Canon 3 of the Code of Judicial Conduct and the Rules of Court.”[1] Acting thereon, the Court referred the case to the Court of Appeals, “for investigation, report and recommendation.”[2] The factual antecedents aptly stated by hid Honor, Ruben T. Reyes, Associate Justice of the Court of Appeals, in his Investigation Report which we have verified to be duly supported by the record are as follows:

#### **“THE CHARGES**

“Complainant charges respondent with gross ignorance of the law, serious misconduct and grave abuse of authority – all in violation of the law, Canon 3 of the Code of Judicial Conduct and the Rules of Court.

“The triple charges sprang from an order of respondent Judge directing the release of a convicted prisoner.

“Four reasons were advanced to support the charges, to wit:

“1. The order of release was issued when respondent Judge had lost jurisdiction over the case, the judgment having become final and executory and Bilao having commenced to serve his sentence.

“2. The release order was issued on a Muslim Public Holiday, June 29, 1993, as per proclamation by the Mayor of Marawi City.

“3. There is no such thing as a petition for relief from a judgment in a criminal case.

“4. Respondent Judge’s issuance of said order reflects a gross ignorance or the law.

#### **“THE FACTS**

“From the complaint and affidavit of complainant submitted to the Court Administrator, the following facts are disclosed:

“On February 26, 1993, respondent Judge Amer R. Ibrahim convicted a certain Lominog Bilao (alias Rolly Bilao) of attempted murder and grave threats.

“The decision was promulgated in the absence of the accused who failed to appear despite due notice, per Order of March 30, 1993. Pursuant to the Rules, the Clerk of Court was directed to record the disposition in the criminal docket and to furnish a copy of decision to the accused and/or counsel. By a separate order on the same date, respondent further confiscated the bond and directed the bondsman to explain within (30) days from receipt thereof why no final judgment should be rendered against the bond.

“According to complainant, copy of the decision was served upon by the accused and counsel on April 13 and 12, 1993, respectively, but nobody signed for the receipt, per Process Server’s return.

“On June 26, 1993 Bilao was arrested and committed by the Clerk of Court to the City Warden. PNP City Jail, Marawi City under a mimeographed form for ‘Detention During Pendency of the case’ (Convicted).

“On June 29, 1993, Bilao’s counsel filed a ‘Relief From Judgment And/Or Motion For New Trial Or Reconsideration’ praying for reconsideration of the decision, reinstatement of the bail bond and his release from custody of the law. On the same day, respondent issued the questioned order, reading as follows:

‘ORDER‘In this incident, accused Lominog Bilao through counsel moves for new trial and/or reconsideration/relief from judgment of the decision of this court in the above entitled cases for reasons therein stated. Counsel further prays for provisional release of accused Lominog Bilao from custody on the basis of his bailbond. This motion cannot be acted upon ex-parte and is therefore set for hearing.

‘Considering, however, that no final judgment against the bond has been handed down, pending hearing of this incident, said bailbond is hereby ordered re-instated and the accused Lominog Bilao is therefore meantime allowed to stay under its legal effects.’

‘The City Warden is therefore directed to release said accused Lominog Bilao from his official custody by reason of these cases, unless he is detained for some other legal cause.

‘Let the hearing of this motion be set on July 22, 1993 at 8:30 o’clock in the morning.

‘SO ORDERED.’

“Complainant alleged that the release of Bilao posed a danger to her life and limb as well as to her family, including her husband, Judge Pagadapun, because Bilao has organized a terrorist group. Thus, on Saturday, September 4, 1993 at around 10:00 o’clock in the morning, Bilao reportedly fired several shots from his M-16 armalite about 30 meters away from complainant’s residence. This necessitated the detail of two (2) PNP men and one (1) army soldier to protect complainant’s family.

#### “RESPONDENT’S DEFENSE

“In his comment on record respondent pointed out that the twin cases against Bilao were tried in absentia because of the difficulty or failure of the accused to find a lawyer from the area, the complainant being the family of an RTC Judge and the lawyers being apprehensive of what Judge Pangadapun might do to the cases of their clients pending before his court. The plight of the accused is reflected in the decision (page 3, Annex “A”, complaint) where respondent judge, in part, stated:

‘The defense deliberately failed to present their evidence despite repeated notifications for them to present the same. For after they waived their presence at the beginning of the trial of these cases in 1991, accused did not attend trials anymore.’

“Considering this circumstance, the return of service of Process Server Comiling Dicali, a relative of Judge Pangadapun, on April 14, 1993 alleging that copy of the decision was served upon the accused became doubtful to respondent vis-à-vis the allegation in the motion for new trial/reconsideration of accused Bilao that he could have filed the motion immediately had he been duly notified of the judgment. This motion was followed by a ‘Manifestation’ dated July 2, 1993, stating that the accused ‘learned of the judgment of conviction only on June 26, 1993 (date of his arrest) which prompted (him) to file the motion for new trial/reconsideration.’

“Respondent explained:

‘While the undersigned respondent is aware of the presumption of regularity in the performance of official duty

by the said process server, such presumption 'may not by itself prevail against the constitutional presumption of innocence accorded the accused' (People vs. Yutuc , 188 SCRA 1), and as was held in Pamintuan vs. IAC, 186 SCRA 83, 'where the trial court's decision was not properly served on the private respondent, the same has not yet become final and executory.'

'The peculiar circumstances obtaining in these cases prompted the undersigned respondent to set the defense' motion of June 29, 1993 for hearing to July 22, 1993 (See Annexes "4"; "4-A"; "4-B") without prejudice to the already scheduled hearing of the defense motion on July 22, 1993. (See annexes "3"; 3-A ) and in the same order reinstated the bond for the accused and allowed him to be released provisionally from custody of the law by virtue of said re-instated bailbond.'

On June 30, 1993, the prosecution filed an ex-parte motions for the reconsideration of the order of June 29, 1993. This Court on July 5, 1993 consequently modified that order of June 29, 1993 by granting the prosecution prayer for the cancellation of the bailbond and re-arrest of the accused (See annexes "4"; "4-A"; "4-B") without prejudice to the already schedule hearing of the defense motion on July 22, 1993.

'From July 5, 1993 and until now the warrant of arrest which was issued against the accused stands. On July 22, 1993, the scheduled hearing was held but the prosecution submitted the incident for resolution. As no evidence were submitted, this court on July 28, 1993 denied the motion for new trial/reconsideration.'

x x x

'x x x. As against the circumstances that obtained during the trial of these cases. Re-pressures even upon lawyers for the accused, I was convinced more by the allegation of the accused through counsel on June 29, 1993 that they learned of the decision of conviction only at the time of arrest on June 26, 1993 which was barely four (4) days back. The accused has not therefore voluntarily and knowingly commenced upon the service of his sentence, but was merely confined after promulgation of the judgment of conviction under the warrant of arrest correspondingly issued.'

"As to why his assailed order was issued on a special holiday, respondent admitted as follows:

'Candidly, we did not know that June 29, 1993 was declared a local Moslem holiday as we were not furnished a copy by the City government of said proclamation and it was a Tuesday, court proceedings were had as well as those of official transactions (See Annex 5).'

"This is corroborated by a certification of Judge Santos B. Adiong of Branch 8, RTC, Marawi City to the effect that his coun conducted hearing on several cases on Tuesday, June 29, 1993 at 8:00 o'clock in the morning. 'Lawyers argued their case as this court is not aware of it being declared a Muslim Holiday as the same was not furnished our courts.'"[3]

From the above stated facts, the investigating Justice made the following findings and recommendation:

"The task of determining whether or not respondent acted with gross ignorance of the law, gross misconduct or grave abuse of authority in issuing the release order of June 29, 1993 calls for an inquiry into three legal questions, viz:

"1. Has the judgment of conviction become final as of that date?

"2. May a confiscated bond be validly reinstated?

"3. Was the issuance of the order on a special Muslim Holiday grossly erroneous or improper?

"FIRST. Complainant, in her Reply submitted before the withdrawal, theorized that the judgment had become

final and executory because (a) Bilao's period to appeal lapsed without perfecting an appeal and (b) he started to serve his sentence.

"The fifteen-day period was obviously based on the process server's return of April 24, 1993 indicating that copies of the decision were served on Bilao and his counsel on April 13 and 12, 1993, respectively. The return, under ordinary circumstances, is entitled to the presumption that official duty has been regularly performed. The denial by both accused and counsel that they received such copies of the decision cannot prevail over the official return of service.

"It will be noted, however, that while respondent admitted having entertained doubts on the actual receipt of decision by the accused and counsel, he did not outright give full credence to the denial. Respondent merely accorded to the accused temporary benefit of the doubt by reinstating the bond for his provisional release while he set the motion for new trial/reconsideration for hearing. When the defense failed to substantiate their claim, respondent denied the motion and ordered the re-arrest of the accused.

"Respondent is correct in maintaining that Bilao had not started to serve his sentence. Accused was merely arrested and confined pursuant to the order of arrest after the promulgation of judgment in absentia. Where the accused did not voluntarily and knowingly commence upon the service of his sentence, but is merely ordered confined after promulgation of the judgment, the sentence should not be considered final or the accused cannot be considered to have commenced to serve the sentence. The same is true where there is no evidence that the accused voluntarily submitted himself for confinement knowing the consequence thereof.

"SECOND. When a bail bond is forfeited due to non-appearance of the accused, 'the bondsmen are given thirty (30) days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bonds.' It is after the failure of the bondsmen to produce the person of the principal (accused) and to submit a satisfactory explanation within the 30-day period that a judgment is rendered on the bond.

"As respondent correctly observed, there is no indication on record that the order confiscating the bond was received by the bondsmen. The 30-day period has not commenced, hence, there was yet no judgment on the bond. That bond, therefore, could still be reinstated as of June 29, 1993. In fact, even after a judgment on a bond is rendered, the Court is given the power to set aside or modify the previous judgment. The judgment of confiscation is merely provisional in character, subject to the contingency that the bondsmen may finally secure the arrest of the principal and his production in court.

"THIRD. There is no dispute that June 29, 1993, date the assailed decision was issued, was declared as one of the Muslim Legal Holidays under Executive Order No. 16-93 under June 23, 1993 of the City Mayor of the Islamic City of Marawi. It happened to be the 10th day of the Hijrah calendar, an 'ASHURA' known as Islamic Thanksgiving day and a moment of reckoning and self-renewal or search for peace and development. Complainant, however, failed to controvert respondent's claim, corroborated by another Judge of the same Court, that they were not furnished a copy of the said order of the City Mayor and that since it was Tuesday and they were unaware of it, Court hearings were actually conducted.

"Absent any proof of publication or dissemination to the courts of said executive order, respondent cannot be charged with knowledge thereof. His issuance of an order on that date cannot, therefore, be branded as reflecting gross, ignorance of the law, serious error or improper conduct.

"In fine, undersigned investigating Justice finds no sufficient factual and legal justification to hold respondent administratively liable under the complaint. There is, thus, no necessity to dwell on the effect of the subsequent withdrawal of such complaint. But it is not amiss to note that a reconciliation of two brother Judges and their families that figured in a misunderstanding, to use a trite word, is a welcome sight.

"RECOMMENDATION

“WHEREFORE, undersigned respectfully recommends the exoneration of respondent Judge.”[4]

We subscribe with the recommendation of the Investigating Justice exonerating respondent Judge from the charges. We find no reasonable ground to hold respondent Judge liable for any irregularity in the discharge of his functions. Indeed, the parties seemed to have regained their harmonious relationship as records disclose that the complainant herself manifested that she has already reconciled with the respondent Judge upon the intercession of their “mutual relatives led by former Governor Princess Tarhata A. Lucman, Assemblywoman Princess Johayra P. Pangarungan, and Hadji Mustapha Badio x x x in accordance with Muslim customs and traditions.”[5] ACCORDINGLY, finding no factual or legal basis for the administrative charges filed against herein respondent RTC Judge Amer R. Ibrahim the same are hereby dismissed.

**SO ORDERED.**

Narvasa, C.J., Romero, Melo, and Panganiban, JJ., concur.

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[1] Rollo, p. 1.

[2] Resolution, dated February 28, 1994, First Division, Supreme Court.

[3] Investigation Report, pp. 3-10.

[4] Id., pp. 10-14.

[5] Rollo, p. 90.

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