

SATURNINO PASCUA, COMPLAINANT, VS. BERNABE ODERO AND TEOFILO C. CHIONG, RESPONDENTS.*A.M. No. P-1730. December 14, 1978*

Ponente: CONCEPCION JR., J.

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Administrative complaint against the Clerk of Court and Branch Clerk of Court of Branch XIII of the Court of First Instance of Pangasinan for neglect and refusal to perform an official duty.

It appears that on May 25, 1973, the herein complainant, Saturnino Pascua, filed a complaint for damages against Pedro Caampued and Estefania Ibañez with the Court of First Instance of Pangasinan, Branch XIII, Alaminos, Pangasinan. The case was docketed therein as Civil Case No. A-827. Upon motion of the defendants, the complaint was dismissed on October 1, 1973.[1] Whereupon Saturnino Pascua filed a notice of appeal, record on appeal, and appeal bond, which the defendants opposed because the plaintiff failed to include a certain pleading in his record on appeal. Accordingly, the court ordered Saturnino Pascua to amend his record on appeal and scheduled the consideration of the said record on appeal at a later date. But, before the record on appeal could be considered, or on November 12, 1973, the trial court amended its order of October 1, 1973, to the effect that instead of the complaint being dismissed, the plaintiff therein was given 30 days from notice within which to amend his complaint; the appeal was denied and the appeal bond submitted ordered refunded to the plaintiff.[2] Not satisfied, Saturnino Pascua filed a petition for mandamus with the Court of Appeals to compel the judge to approve the record on appeal and to give due course to the appeal taken by him from the order of dismissal. The Court of Appeals however, dismissed his petition on December 7, 1973.[3] Consequently, Saturnino Pascua filed a petition for certiorari with this Court to review said order, but the Court denied his petition on January 10, 1974.[4]

On December 20, 1976, Saturnino Pascua filed a "Motion for Writ of Execution" and a "Motion for Refund of Appeal Bond" with the Court of First Instance of Pangasinan, and when the Clerk of Court and Branch Clerk of Court refused to issue the writ, Saturnino Pascua filed the instant complaint for neglect and refusal to perform official duties against the said officials. A similar complaint was filed against Judge Magno B. Pablo, the presiding judge of Branch XIII, for refusing to issue a writ of execution in the said case.[5]

Commenting on the complaint, the respondent clerk of court, Bernabe Odero, stated:

"That one (1) week prior to the filing of the instant complaint in the Supreme Court, the complainant Saturnino Pascual came to my office demanding from me to issue the Writ of Execution immediately. I went over the records he was showing me and the record of the case in our office, I found out that there is no basis to issue the writ of execution he is requesting and consequently, I refused to issue the writ." [6]

The respondent Teofilo C. Chiong, Branch Clerk of Court of Branch XIII of the Court of First Instance of Pangasinan, stated, for his part, that the motion for the issuance of a writ of execution was denied by the trial court

on March 1, 1976,[7] and that he exercised utmost patience and understanding in dealing with the complainant, Saturnino Pascua, who insisted on the issuance of a writ of execution by him notwithstanding his lack of legal authority to do so. As for the cash appeal bond filed by the complainant, he states:

"With respect to the cash appeal bond of P120.00, deposited in this Court (CFI) in Civil Case No. A-827 (Pascual vs. Campued, et al.), under O.R. No. 4111554-R, dated October 26, 1973, issued by Branch Clerk of Court Oscar Z. Radoc, of this CFI Branch, said cash appeal bond is no longer in the physical custody of this Court (CFI), the same having been remitted and/or deposited with the proper government treasury, the reason why a copy of the Order of Court (CFI dated November 12, 1973 (same as Annex 'B') was again furnished Mr. Saturnino O. Pascua, as authority from this Court (CFI) to facilitate his (Mr. Pascua's) desire to withdraw said cash appeal bond from the Treasury." [8]

The facts and circumstances of the case do not warrant a finding of culpable negligence or refusal to perform an official duty since there was no order from the presiding judge for the respondents to issue the writ of execution asked by the complainant. Besides, it appears that the motion for the issuance of a writ of execution was denied by the trial court on March 1, 1976.

As for the motion for the refund of the appeal bond, it appears that the trial court had ordered its refund to the plaintiff on November 12, 1973. But, if the money was not actually returned to the plaintiff, it was due to his failure to withdraw the same earlier, so that the money was deposited or remitted to the government treasury. To facilitate its withdrawal, the respondent Teofilo C. Chiong furnished the complainant with a copy of the order of November 12, 1973, but the complainant failed to comprehend the significance of the act.

WHEREFORE, the complaint should be, as it is hereby, DISMISSED.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] Rollo, p. 60.

[2] Id., p. 59.

[3] Id., p. 62.

[4] Id., pp. 69, 70.

[5] Adm. Matter No. 1308-CFI, Saturnino O. Pascua vs. Judge Magno B. Pablo, dismissed March 21, 1978, Aquino, J., ponente.

[6] Rollo, p. 51.

[7] Id., p. 58.

[8] Id., p. 53.

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