

RODOLFO R. MAGO, COMPLAINANT, VS. JUDGE AUREA G. PEÑALOSA-FERMO, MTC, LABO, CAMARINES NORTE, RESPONDENT.

A.M. No. MTJ-08-1715 [Formerly A.M. OCA IPI No. 08-2037-MTJ]. March 19, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Rodolfo R. Mago (complainant) filed before the Municipal Trial Court (MTC) of Labo, Camarines Norte a complaint for grave coercion against Sheriff Alex Rodolfo Angeles (of the Department of Agrarian Reform Adjudication Board [DARAB]), et al. The case was docketed as Criminal Case No. 04-7800.

Sheriff Angeles filed a counter-charge for grave threats against complainant and his sons, docketed as Criminal Case No. 04-7811.

Alleging that Presiding Judge of the MTC Labo, Camarines Sur Judge Aurea G. Peñalosa-Fermo (respondent) committed gross ignorance of the law and bias in the disposition of his complaint and of the counter-charge against him, complainant filed the present administrative complaint, the details of which were summarized by the Office of the Court Administrator (OCA) as follows:[1]

Mr. Mago claims that on April 21, 2004 he filed a complaint for Grave Coercion against Department of Agrarian Reform Adjudication Board (DARAB for brevity) Sheriff Alex Roberto Angeles which was docketed as Criminal Case No. 04-7800. However, instead of summoning the accused for a "Preliminary Investigation", he received a complaint charging him and his two (2) sons with Grave Threats [which was docketed as Criminal Case No. 04-7811]. He stresses the complaint against him as purely fabricated. He states that the complainant in the said case was not DARAB Sheriff Angeles. He avers that the affidavits of the witnesses in the said case could not be found in the records of the Municipal Trial Court (MTC). Complainant further declares that on July 20, 2004, he received a subpoena to attend the preliminary investigation of Criminal Case No. 04-7811. In compliance, he and his witnesses attended, and even without the assistance of counsel, they were examined through a prepared set of questions handed to them by the stenographer. The respondent judge was not present then. The complainant also states that right after the preliminary investigation, he was immediately arrested and was imprisoned for three (3) days. Thereafter, he was released after he posted bail in the amount of Php12,000 pesos.

Complainant also alleges that he filed a Petition for Certiorari, Mandamus, Prohibition with Application for Preliminary Injunction and Ex-Parte Motion for Temporary Restraining Order questioning the order of respondent judge in denying his omnibus motion to quash the information, suppress evidence and produce, inspect and copy documentary evidence. He adds that despite the filing of this petition, the respondent judge continued to direct him to appear at the pre-trial/preliminary conference. He likewise avers that his arraignment was set beyond the period allowed by the Rules of Court. He also laments that he could not locate his lawyer, Atty. Lamberto Bonifacio, Jr. Finally, he alleges that the respondent judge had been biased when hearing his case.[2] (*Italics in the original; emphasis an underscoring supplied*)

By 2[nd] Indorsement dated July 31, 2007,[3] respondent gave her side of the case as follows:

Contrary to complainant's allegation, the complaint in Criminal Case No. 04-7811 (for grave threats), and the affidavits of the therein complainant-sheriff's witnesses were attached to the record.[4]

Admitting complainant's allegation that the court stenographer examined complainant and his witnesses during the preliminary investigation of the grave threats complaint against him with the use of prepared written set of questions, respondent explains as follows:

What [complainant] claimed in his Letter-Complaint that the Court Stenographer has a prepared sheet of questions during the preliminary examination is true because after a complaint is filed, the undersigned prepares her questions for preliminary examination based on the affidavits of the complaining witnesses and the counter affidavits of the accused. This is done to make it easy for the Stenographers to take/print the transcript of the proceedings. Some witnesses even ask to read/study the question and request that they write down their answers to the questions for the Stenographers to finalize. Also, this is convenient when more than one preliminary examination is scheduled for the day. This procedure makes it easier for the Stenographers and the witnesses, too, considering the cramped office space.

After the witnesses are briefed, the [s]tenographers take over since the prepared sheets are given to them so they could propound the questions and the answers are typed directly. x x x[5] (Emphasis, italics and underscoring supplied)

Denying complainant's allegation that he was arrested within the court premises on July 20, 2004 or right after the conduct of the preliminary examination conducted in the grave threats complaint against him, respondent alleges that the preliminary examination was conducted at 9:00 o'clock in the morning of July 19, 2004; that she issued an Order[6] the following day, July 20, 2004, finding probable cause and directing the issuance of a warrant of arrest[7] against complainant which the warrant officer received at 4:40 p.m. on even date; and that complainant was arrested on July 21, 2004 at the Poblacion, Labo, Camarines Norte, as shown by the Warrant Officer's Return of Service.[8]

Admitting that there was delay in scheduling the arraignment of complainant after his arrest, respondent surmises that the Clerk of Court or the clerk-in-charge might have overlooked the Return of Service of the warrant officer. Respondent states, however, that when the arraignment was scheduled, complainant's counsel opposed the same and filed an Omnibus Motion which resulted in the repeated resetting of the arraignment. Respondent adds that after complainant was arraigned on June 6, 2006, the preliminary conference/pre-trial was set but was not terminated due to the absence of complainant or his counsel.[9]

In fact, respondent goes on to allege that in complainant's attempt to block his arraignment and to quash the Information against him, he filed a Petition for Certiorari, Mandamus, Prohibition with Application for Mandatory Injunction and Ex-Parte Motion for Temporary Restraining Order with the Regional Trial Court of Labo which was denied for lack of merit. [10]

On the allegation of bias on her part, respondent claims that until the criminal complaints were filed, she did not know any of the parties.

By June 18, 2008 Report,[11] the OCA came up with the following Evaluation:

x x x x

. . . [W]e hold [respondent] administratively liable for her unfamiliarity with the basic rules on preliminary investigation. There was irregularity during the preliminary investigation when the respondent judge allowed the stenographers to handle the latter part of the proceedings.

x x x x

. . . [R]espondent admitted that after the complaint was filed, she prepared a set of questions based on the affidavits of the complaining witnesses and counter affidavits of the accused. She further added that during the preliminary investigation and after briefing the accused and his witnesses, the stenographers took charge of the proceedings. Hence, the respondent judge violated the rules on preliminary investigation. Respondent should not have allowed her stenographer to handle the latter part of the proceedings even if she only wanted to expedite the proceedings and it was more convenient. Respondent judge should have personally taken charge of the entire proceedings since the power to conduct preliminary investigations vests only on her and not on the stenographer.

x x x x[12] (Emphasis and underscoring supplied)

Finding respondent guilty of gross ignorance of the law or procedure, the OCA recommended that respondent be FINED in the amount of P20,000 in this wise:

[W]e deem it proper to recommend the imposition upon the respondent judge of a penalty of fine in the amount of P20,000[,] this being her first offense.

As regards the issue of continuous hearing of the case by the respondent judge, we opine that the respondent judge only acted in good faith and in accordance with law when she continued to direct the herein complainant to attend the pre-trial. Based on the records, the Petition for Certiorari, Mandamus, Prohibition with Application for Mandatory Injunction and Ex-Parte Motion for Temporary Restraining Order and the Motion for Reconsideration thereto filed by complainant with the Regional Trial Court, Branch 64, Labo, Camarines Norte were already denied; thus the respondent judge had the authority to proceed with the case. The postponements in the pre-trial were not attributable to the respondent judge but to the accused and his counsel.

Finally, on the issue of bias, complainant failed to submit any evidence showing the respondent biased or partial in hearing the case. Bias and partiality of a judge must be proved by clear and convincing evidence. Mere suspicion that a judge is bias or partial would not be enough.[13] (Italics in the original; underscoring supplied)

By Resolution of August 20, 2008,[14] the Court, on the recommendation of the OCA, re-docketed the case and required the parties to manifest within ten days from notice whether they were willing to submit the matter for resolution on the basis of the pleadings filed and submitted. Both parties have manifested in the affirmative.

The Court finds the evaluation well-taken.

Prior to the amendment on October 3, 2005 of Rules 112 and 114 of the Rules of Court via A.M. No. 05-8-26-SC, Re: Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts, judges of municipal trial courts were empowered to conduct preliminary investigations in which they exercised discretion in determining whether there was probable cause to hale the respondent into court. Such being the case, they could not delegate the discretion to another.

An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another.

In those cases in which the proper execution of the office requires on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another.[15] (Underscoring supplied)

Then, as now, a personal examination of the complainant in a criminal case and his witness/es was required. Thus,

under Section 4, Rule 112 of the Revised Rules of Court before its amendment, the "investigating fiscal" was required to "certify under oath that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses . . . "

By respondent's delegation of the examination of the sheriff-complainant in the grave threats case to the stenographer, and worse, by allowing the witnesses to "read/study the [written] question[s]" to be propounded to them and to "write their answers [thereto]" upon respondent's justification that the scheme was for the convenience of the stenographers, respondent betrayed her lack of knowledge of procedure, thereby contributing to the erosion of public confidence in the judicial system.

Respondent is thus guilty of gross ignorance of the law or procedure which, under Section 8, Rule 140 of the Rules of Court, is a serious charge,[16] for which Section 11 (A) of the same Rule prescribes the following penalty:

SEC. 11. Sanctions. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

- Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations. Provided, however, That the forfeiture of benefits shall in no case include accrued leave credits;
- Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
- A fine of more than P20,000 but not exceeding P40,000.00.

The Court thus finds in order the Recommendation of the OCA to impose a fine of P20,000 on respondent. The OCA's recommendation to warn respondent that a "repetition of the same act will be dealt with more severely" does not lie, however, A.M. No. 05-8-26-SC, which took effect on October 3, 2005, having removed the power of judges of the first level courts[17] to conduct preliminary investigation. A warning that a commission of another infraction tantamount to gross ignorance of law or procedures shall be dealt with more severely lies, however.

WHEREFORE, the Court finds respondent, Judge Aurea G. Peñalosa-Fermo of the Municipal Trial Court of Labo, Camarines Norte, guilty of Gross Ignorance of the Law or Procedure. She is FINED in the amount of Twenty Thousand (P20,000) Pesos and warned that a commission of another infraction which is tantamount to the same charge shall be dealt with more severely.

SO ORDERED.

Quisumbing, (Chairperson), Velasco, Jr., Nachura, and Brion, JJ., concur.

[1] Rollo, pp. 1-5.

[2] Id. at 1-2.

[3] Id. at 82-85.

[4] Id. at 83. The complaint and the affidavits were attached as Annexes "G," "H," "I," and "J" to the 2[nd] Indorsement cum Comment.

[5] Id. at 83.

[6] Annex "O," id. at 136.

[7] Annex "P," id. at 137.

[8] Annex "Q," id. at 137-A.

[9] Id. at 84-85.

[10] Id. at 85.

[11] Id. at 1-5.

[12] Id. at 4-5.

[13] Id. at 5.

[14] Id. at 239-240.

[15] Benamira v. Garrucho, Jr., G.R. No. 92008, July 30, 1990, 188 SCRA 154, 159-160.

[16] Garay v. Bartolome, A.M. No. MTJ-08-1703, June 17, 2008, 554 SCRA 492, 497.

[17] Vide Re:Judicial Audit Conducted in the Municipal Trial Court, Asuncion, Davao del Norte, A.M. No. 07-8-207-MTC, January 31, 2008, 543 SCRA, 221, 337

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