

MARTIN DEL ROSARIO, COMPLAINANT, VS. JUDGE ERANIO G. CEDILLO, MUNICIPAL TRIAL COURT, MEYCAUAYAN, BULACAN, RESPONDENT.

A.M. No. MTJ-04-1557. October 21, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

The instant administrative complaint for gross ignorance of the law and conduct prejudicial to public service, stemmed from the respondent Judge's January 28, 2003 and July 22, 2003 resolutions which dismissed the cases for violation of Batas Pambansa No. 22 (BP 22) filed by complainant Martin Del Rosario.

In his sworn complaint,[1] complainant alleged that he extended 12 million peso loan to Filipina A. Estrella, secured by 3 postdated Far East Bank and Trust Company (FEBTC) checks[2] and 2 real estate mortgages. It turned out, however, that the transfer certificate title of the lots were fake. A case for falsification of public document against Estrella is pending with the Regional Trial Court of Malolos, Bulacan, docketed as Criminal Case Nos. 1219 & 1220-M-2001.

On the other hand, the 3 checks were dishonored for insufficiency of funds upon presentment on their due dates. Hence, complainant filed Criminal Case Nos. 98-27287, 98-27288 and 98-27289, for violation of BP 22 against Estrella. The cases were raffled to Branch 1 of the Municipal Trial Court of Meycauayan, Bulacan, presided by respondent Judge.

At the pre-trial, the parties entered into the following stipulation of facts:

(1)

That accused admit[s] that account number 005024-00737-9 is under the name of Filipina A. Estrella;

(2)

That accused Filipina Estrella has a checking account or current account with Far East Bank and Trust Company, Alabang Branch;

(3)

That the signature appearing on check nos. 24A0001528P; 24A0001529P; and 24A0001527P are all signatures of accused Filipina Estrella;

(4)

That the aforementioned checks were issued by the accused to complainant Martin del Rosario;

(5)

That these checks were dishonored by reason of DAIF [Drawn Against Insufficient Funds]. [3]

After the prosecution rested its case, Estrella, with prior leave of court, filed a Demurrer to Evidence claiming, inter alia, that the requisite notice of dishonor was not sent to her. The latter contended that the registry return receipt bearing the signature “A. Estrella” was not sufficient to prove that the notice of dishonor in the form of a demand letter presented by the prosecution was truly received by her or her authorized agent. She added that the demand letter was defective because it sought payment of the amount of P13,680,000.00 when the total amount of the dishonored checks was only P12,680,000.00, and that said demand did not state the account number as well as the amount, date and number of the checks.

On January 28, 2003, the trial court granted the demurrer to evidence on the ground that the prosecution failed to establish that a notice of dishonor was sent to and received by Estrella. It held that the demand letter’s registry return receipt with a signature “A. Estrella”, which was neither authenticated nor identified, does not prove beyond reasonable doubt that Estrella or her duly authorized agent received the notice of dishonor. The court a quo, however, did not address her civil liability. The dispositive portion of the resolution granting the demurrer, reads:

WHEREFORE, this court finds the Demurrer to Evidence impressed with merit. Accordingly, the above-captioned cases (Crim. Cases Nos. 98-27287, 98-27288 and 98-27289) are hereby DISMISSED.

SO ORDERED.[4]

Complainant filed a motion for reconsideration seeking a definite ruling of the court on the civil aspect of the BP 22 cases against the accused.

On July 22, 2003, the respondent Judge amended his January 28, 2003 resolution, specifying the dismissal of the civil aspect of the criminal cases as follows:

In sum, this court finds that the prosecution failed to prove adequate notice of dishonor of the subject checks on accused’s part, thus preceding any findings of PRIMA FACIE evidence of knowledge of insufficiency of funds. Neither does the prosecution adequately establish by preponderance of evidence accused[‘s] civil liability as it appears that the latter have executed two (2) Real Estate Mortgage in favor of the private complainant as security or collateral for said loans.

WHEREFORE, this court finds the Demurrer to Evidence impressed with merit. Accordingly, the above-captioned cases (Crim. Cases Nos. 98-27287, 27288 and 27289) are hereby DISMISSED. The civil case deemed included in criminal case is hereby DISMISSED on the ground of absence of preponderance of evidence.

SO ORDERED.[5]

On October 13, 2003, complainant filed a petition for relief from judgment with motion to withdraw motion for reconsideration, seeking to set aside the July 22, 2003 resolution of the trial court only insofar as the civil aspect of the BP 22 cases is concerned.[6] He thereafter filed[7] a motion for the inhibition[8] of respondent Judge which the latter granted.

On November 3, 2003, complainant instituted the instant complaint charging respondent Judge with gross ignorance of the law and conduct prejudicial to public service for dismissing the civil and criminal aspects of the BP 22 cases.

In his Comment,[9] respondent Judge averred that he is under no compulsion to hold the accused civilly liable absent preponderant evidence in support thereof. He added that an administrative complaint is not the appropriate remedy for every act of a Judge deemed aberrant or irregular where a judicial remedy exists and is available, such as a motion for reconsideration or an appeal. Thus, if the complainant disagrees with respondent’s resolution or

order, the remedy is to resort to judicial remedies, which he in fact did by filing a motion for reconsideration and, lately, a petition for relief from judgment with motion to withdraw motion for reconsideration, now pending and awaiting the designation of another Judge in view of his inhibition from the case.

On the basis of its evaluation, the Office of the Court Administrator found that the respondent judge was guilty of gross ignorance of the law in dismissing both the criminal and civil aspects of the BP 22 cases. It thus recommended that the instant case be re-docketed as a regular administrative matter and that respondent Judge be suspended for four (4) months without pay and other benefits.[10]

Upon being required by the Court,[11] respondent Judge manifested that he is willing to submit the case for decision on the basis of the pleadings submitted.[12] Complainant, on the other hand, failed to file his manifestation hence, the Court is constrained to dispense with the filing thereof.

For a violation of BP 22 to be committed, the following elements must be present:

- (1) the making, drawing, and issuance of any check to apply for account or for value;
- (2) the knowledge of the maker, drawer, or issuer that at the time of issue there are no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
- (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[13]

As to the second element it must be shown that the issuer, at the time of the check's issuance, had knowledge that he did not have enough funds or credit in the bank for payment thereof upon its presentment. Since the second element involves a state of mind which is difficult to verify, Section 2 of BP 22 creates a presumption *juris tantum* that the second element *prima facie* exists when the first and third elements of the offense are present. This presumption, however, does not arise when the issuer pays the amount of the check or makes arrangement for its payment within five banking days after receiving notice that such check has not been paid by the drawee. The law gives the accused an opportunity to satisfy the amount indicated in the check upon receipt of a notice of dishonor. Thus, the presumption that the issuer had knowledge of the insufficiency of funds is brought into existence only after it is proved that the issuer had received a notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangement for its payment.[14]

In the case at bar, the respondent Judge correctly dismissed the criminal aspect of the BP 22 cases for failure to establish that Estrella received the notice of dishonor in the form of a demand letter. The presentation of the said letter and the registry receipt, with an unauthenticated signature, do not meet the required proof beyond reasonable doubt that Estrella received such notice, especially considering that she denied receipt thereof. The rule is that receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.[15] Moreover, the prosecution never made an effort to identify the person who allegedly received the letter and signed the registry receipt as "A. Estrella." The matter of which among the accused, Estrella herself or her authorized agent signed the registry receipt was never proven by the prosecution.

Similarly, in *Ting v. Court of Appeals*, the accused was acquitted because the prosecution failed to discharge the burden of proving the accused or his duly authorized agent's receipt of the required notice of dishonor. Thus –

... the prosecution alleged that the demand letter had been sent by mail. To prove mailing, it presented a copy of the demand letter as well as the registry return receipt. However, no attempt was made to show that the demand letter was indeed sent through registered mail nor was the signature on the registry return receipt authenticated or identified. It cannot even be gleaned from the testimony of private complainant as to who sent

the demand letter and when the same was sent. In fact, the prosecution seems to have presumed that the registry return receipt was proof enough that the demand letter was sent through registered mail and that the same was actually received by petitioners or their agents.

As adverted to earlier, it is necessary in cases for violation of Batas Pambansa Blg. 22, that the prosecution prove that the issuer had received a notice of dishonor. It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service (58 Am Jur 2d, Notice, § 45). The burden of proving notice rests upon the party asserting its existence. Now, ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for Batas Pambansa Blg. 22 cases, there should be clear proof of notice. Moreover, it is a general rule that, when service of a notice is sought to be made by mail, it should appear that the conditions on which the validity of such service depends had existence, otherwise the evidence is insufficient to establish the fact of service (C.J.S., Notice, § 18). In the instant case, the prosecution did not present proof that the demand letter was sent through registered mail, relying as it did only on the registry return receipt. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 (See Section 13, Rule 13, 1997 Rules of Civil Procedure). If, in addition to the registry receipt, it is required in civil cases that an affidavit of mailing as proof of service be presented, then with more reason should we hold in criminal cases that a registry receipt alone is insufficient as proof of mailing. In the instant case, the prosecution failed to present the testimony, or at least the affidavit, of the person mailing that, indeed, the demand letter was sent.

Moreover, petitioners, during the pre-trial, denied having received the demand letter (p. 135, Rollo.). Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters (Central Trust Co. v. City of Des Moines, 218 NW 580).

Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it." In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt. There being insufficient proof that petitioners received notice that their checks had been dishonored, the presumption that they knew of the insufficiency of the funds therefor cannot arise.[16]

We cannot, however, rule on the administrative liability of respondent Judge for dismissing the civil aspect of the BP 22 cases because said issue is still the subject of complainant's petition for relief from judgment with motion to withdraw motion for reconsideration pending and awaiting the designation of another Judge in view of respondent Judge's inhibition. An administrative complaint against a judge cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by an erroneous judgment. The administrative or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait for the result thereof. For until complainant's appeal is resolved and the case finally is terminated, the Court will have no basis to conclude whether or not respondent judge is indeed guilty of the charges of gross ignorance of

the law and knowingly rendering an unjust judgment.[17]

In *Frani v. Judge Pagayatan*, citing *Flores v. Abesamis*,[18] it was held that –

“As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (i.e., error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The extraordinary remedies against error or irregularities which may be deemed extraordinary in character (i.e., whimsical, capricious, despotic exercise of power or neglect of duty, etc.) are inter alia the special civil actions of certiorari, prohibition or mandamus, or a motion for inhibition, a petition for change of venue, as the case may be.

Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisite for the taking of other measures against the persons of the judges concerned, whether civil, administrative, or criminal in nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.”

The pendency of complainant’s appeal thus precludes us from looking into the errors committed by respondent judge in rendering the questioned Decision and whether those errors would make him administratively liable for gross ignorance of the law or knowingly rendering an unjust judgment.[19]

Considering that the petition for relief challenging the validity of the July 22, 2003 order is still pending with the Municipal Trial Court, the instant disciplinary action against respondent Judge for gross ignorance of the law and conduct prejudicial to the service in issuing said order is therefore premature.

WHEREFORE, the administrative complaint against respondent Judge Eranio G. Cedillo for gross ignorance of the law and conduct prejudicial to public service is DISMISSED.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing and Carpio, JJ., concur.
Azcuna, J., on leave.

[1] Rollo, p. 1.

[2] In the total amount of P12,680,000.00.

[3] Resolution, Rollo, p. 9.

[4] Resolution, Rollo, p. 21.

[5] Rollo, p. 22.

[6] Id., p. 42.

[7] Filed on November 7, 2003.

[8] Rollo, p. 36.

[9] Id., p. 24.

[10] *Id.*, p. 72.

[11] In a resolution dated July 7, 2004, the Court required the parties to manifest within 10 days from notice whether they are submitting the case for resolution on the basis of the pleadings filed.

[12] Manifestation dated August 19, 2004.

[13] *Ting v. Court of Appeals*, G.R. No. 140665, 13 November 2000, 344 SCRA 551, 556-557.

[14] *Id.*, p. 558.

[15] *Id.*, pp. 561-562.

[16] *Id.*, pp. 560-562.

[17] *Frani v. Judge Pagayatan*, 416 Phil. 205, 213 (2001).

[18] 341 Phil. 299 (1997).

[19] *Supra*, note 17, pp. 213-214.

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