

**VIRGILIO &#038; LUZVIMINDA CABARLOC, PETITIONERS, VS. JUDGE JUAN C. CABUSORA, MUNICIPAL CIRCUIT TRIAL COURT, NARVACAN-SANTA-NAGBUKEL, ILOCOS SUR, RESPONDENT.**

*A.M. No. MTJ-00-1256. December 15, 2000*

Ponente: KAPUNAN, J.

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**KAPUNAN, J.:**

This is an administrative complaint filed by the Spouses Virgilio and Luzviminda Cabarloc against Judge Juan C. Cabusora, Municipal Circuit Trial Court (MCTC), Narvacan-Santa-Nagbukel, Ilocos Sur for Gross Ignorance of the Law, Incompetence, Abuse of Authority and Partiality.

In a sworn letter-complaint dated January 13, 1998 filed with this Court, the Spouses Virgilio and Luzviminda Cabarloc alleged the following:

1. The complainants are the parents of the late Virgilio Cabarloc, Jr. whose violent death led to the filing of Criminal Case No. 3972-N for Murder entitled "People of the Philippines vs. Rolando Cadano a.k.a. Lando, Norlan Cadano, and Simeon Cadano a.k.a. Demy."

2. On October 29, 1997, the Chief of Police of Narvacan Police Station, Narvacan, Ilocos Sur filed the criminal complaint for Murder[1] against the three accused before MCTC Judge Juan C. Cabusora for preliminary investigation. Attached to the criminal complaint were the sworn statements of witnesses Domingo Montero y dela Cruz, Efren Cabanig and Romulo C. Cabansag, which statements were duly subscribed and sworn to before Judge Cabusora.[2]

3. On October 31, 1997, Judge Cabusora issued an Order, to wit:

After conducting an examination in writing and under oath on the witnesses in the form of searching questions and answers, the Court is of the belief that there exists a probable cause and that there is a necessity in placing yhe (sic) accused under immediate custody in order not to furstrate (sic) the ends of justice.

WHEREFORE, let a warrant of arrest be issued against the accused, ROLANDO CADANO, NORLAN CADANO & SIMEON CADANO, NO BAIL is hereby fixed for their provisional liberty.

SO ORDERED.[3]

4. A warrant of arrest was thereby issued against the three-named accused.[4] Apparently, only Rolando Cadano was arrested and detained at the provincial jail.

5. On December 18, 1997 or forty-seven (47) days after the issuance of the warrant of arrest, respondent Judge issued a resolution downgrading the crime to Homicide and exonerating Simeon Cadano. The dispositive portion of the resolution reads as follows:

From the foregoing facts, the Court could not believe that the offense committed is Murder. It is pure and simple Homicide, the Court could not believe also that Simeon Cadano alias Demy had any participation,

hence, therefore, premises considered the crime committed is Homicide and a bailbond of Sixty Thousand Pesos (P60,000.00) is hereby recommended and Simeon Cadano alias Demy is hereby excluded.[5]

6. Pursuant to the resolution, respondent Judge issued an Order of Release of Rolando Cadano dated December 22, 1997.

7. Another Order of Release was issued bearing the same date but said order now included the name of Norlan Cadano.

8. The Order dated December 22, 1997[6] was tampered with considering that the name of Norlan Cadano was merely added after the name of Rolando Cadano. Norlan Cadano was never arrested nor confined at any jail. A certification submitted by Susano L. Arce, Sr., Provincial Warden of Ilocos Sur attested to the fact that Norlan Cadano was never brought to nor confined at the Provincial Jail of Ilocos Sur.[7] Consequently, respondent Judge's order to release accused Norlan Cadano and Simeon Cadano is questionable considering that the latter never surrendered nor was apprehended. Neither did the two file duly approved bailbonds for their provisional liberty.

9. Respondent Judge committed Gross Ignorance of the Law and Gross Misconduct when after finding probable cause and issuing a Warrant of Arrest, he conducted another investigation exonerating one of the accused and recommending the prosecution for murder be reduced to the lesser offense of homicide, instead of forwarding the records of the case to the Office of the Provincial Prosecutor, Vigan, Ilocos Sur pursuant to Rule 112, Section 5 of the New Rules on Criminal Procedure.\*

On June 26, 1998, Judge Juan C. Cabusora filed his Comment dated June 8, 1989 stating the following:

1)

He admits that the criminal complaint for Murder was filed on October 28, 1998 by the Chief of Police of Narvacan, Ilocos Sur;

2)

He also admits that after conducting the preliminary examination on the witnesses, a warrant of arrest was issued against the accused and no bail was fixed for their provisional liberty;

3)

On December 18, 1997, he issued a resolution after going over the records of the case and found out (sic) that the crime committed is Homicide and not Murder and that Simeon Cadano has no participation in the commission of the offense;

4)

An Order of Release was consequently issued for the release of both Rolando Cadano and Norlan Cadano, after having posted the required bail for Homicide of Sixty Thousand Pesos (P60,000.00) each for their temporary liberty.

5)

He, however, denies having issued another Order of Release but what he issued was an Order requiring the accused to cause the annotation of the lien of the properties in the registry Book in the Office of the Register of Deeds, Vigan, Ilocos Sur in accordance with Sec. 14, Rule 114 of the Rules on Criminal Procedure. He avers that the Order attached by the complainants to their complaint is fake and falsified;

6) He admits that he ordered the release of Norlan Cadano but not Simeon Cadano although both of them personally surrendered themselves to the court on December 22, 1997. Considering, however, that they were having a Christmas party at that time, his court personnel were not able to make the necessary commitment order. A joint affidavit of his court employees was executed attesting to this fact.

7) While complainants complain that the accused Norlan Cadano and Simeon Cadano were often seen roaming around prior to December 22, 1997, he asserted that it was not the duty of the judge to arrest people. He advised them to seek the help of the NBI or any other government agency to effect their arrest.

Finally, respondent Judge begs for the Court's forgiveness if he has acted beyond the bounds of the law and promises to be more careful next time in carrying out his duties. He prays for the dismissal of the administrative complaint considering that he is already 68 years old and soon to retire.

Upon evaluation and recommendation by the Office of the Court Administrator, respondent Judge was found to have erred in conducting another preliminary investigation, reversing his own findings *motu proprio* and ordering the release of the two accused without authority. A fine in the amount of P5,000.00 was recommended for committing Abuse of Authority.

On February 16, 2000, the Court issued a resolution noting the sworn letter-complaint filed by the Spouses Cabarloc and the comment thereon of the respondent Judge. Considering the OCA's evaluation, report and recommendation, the Court further resolved to docket this case as a regular administrative proceeding and required the parties to manifest within 10 days if they were willing to submit the case for decision or to file further pleadings on the matter.

In compliance with the resolution, respondent Judge filed his additional comment on March 20, 2000. In said Comment, he reiterated his prayer for the dismissal of the complaint against him since he acted in good faith in the performance of his duties. Furthermore, respondent Judge justified that his actions were in accordance with the procedure prescribed for the conduct of preliminary investigation, citing the case of *Alelio Bernaldez Pen vs. Hon. Anita Amor de Castro*, Judge, Br. 46, Regional Trial Court, Bacolod City:

xxx [T]he procedure prescribed for the conduct of preliminary investigation consists of two (2) phases or stages.

The first phase or stage of the investigation consists of an *ex parte* inquiry of the sufficiency of the complainant and the affidavits and other documents offered in support thereof, and ends with the determination by the judge either: (1) that there is no ground to continue with the inquiry, in which case he dismisses the complaint and transmits the order of dismissal, together with the records of the case, to the Provincial Fiscal (now Provincial Prosecutor); or (2) that the complaint and the supporting documents show sufficient cause to continue with the inquiry, which finding ushers in the second phase.

The second phase or stage is designed to afford the respondent notice of the Complaint, access to complainant's evidence and an opportunity to submit counter-affidavits and supporting documents. In such a scenario, the Judge may conduct a hearing and propound to the parties and their witnesses questions on matters that, in his view, should be clarified. The second phase concludes with the Judge rendering his resolution, either for dismissal of the complaint or finding a *prima facie* case, and holding the respondent for trial which shall be transmitted, together with the pertinent records, to the provincial prosecutor for appropriate action.

xxx.[8]

Judge Cabusora explained that after the second phase of the preliminary investigation where he required the

accused to submit their respective counter-affidavits, he found that the crime committed was only homicide and not murder, in which case he ordered the release of the accused after posting a bail of P60,000.00 each for their provisional liberty. He asserted that a judge should be given this 'reasonable discretion' should he find that the crime committed is homicide and not murder and order the release of the accused, if necessary after posting a bailbond for their provisional liberty.[9]

Judge Cabusora's contention is not well-taken.

Judge Cabusora did not err when he issued the warrant of arrest against the accused after making a determination that there was probable cause that the accused committed the crime and that there was a necessity in placing the accused under immediate custody so as not frustrate the ends of justice. This was well within his discretion and authority to do so as judge. However, Judge Cabusora exceeded his authority in making a determination of the crime committed as this is the function of the prosecution and not of the investigating judge. This is very well explained in the case of *Bais vs. Tugaoen*, which is worth reiterating:

xxx. The purpose of preliminary investigation is primarily to determine whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest maybe issued and the accused held for trial. It is not within the purview of the preliminary investigation to give the judge the right to amend, *motu proprio* the designation of the crime. When the crime comes within the jurisdiction, he shall try the case, and only after trial may he convict for a lesser offense. In a case coming within the original jurisdiction of the Court of First Instance, he should elevate the case as it is, even if in his opinion, the crime is less than that charged.[10]

In *Depamaylo v. Brotarlo*, the Court had this to say:

xxx. Respondent judge justifies the grant of bail to the accused on the ground that the crime was not murder but only homicide. The case was before her, however, for preliminary investigation and for admission of the accused to bail. Her only authority was to determine whether there was probable cause against the accused and, if so, whether the evidence of guilt was strong, considering that the charge was for murder. But she had no power to reduce or change the crime charged in order to justify the grant of bail to the accused. As the Deputy Court Administrator states in his report.

"Moreover, we find that respondent judge committed likewise an irregularity when she reduced the charge of Murder to Homicide. The Court in a number of cases has declared that a municipal judge has no legal authority to determine the character of the crime but only to determine whether or not the evidence presented supported *prima facie* the allegation of facts contained in the complaint. He had no legal authority to determine the character of the crime and his declaration upon that point can only be regarded as an expression of opinion in no wise binding on the court (*People vs. Gorospe*, 53 Phil. 960; *de Guzman vs. Escalona*, 97 SCRA 619). This power belongs to the fiscal (*Bais vs. Tugaoen*, 89 SCRA 101)."[11]

Rule 112, Section 1 of the Rules of Court defines a preliminary investigation as "an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial.[12] For practical considerations and also dictated by necessity considering the lack of prosecutors in the provinces, Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts have been authorized to conduct preliminary investigations.[13] When a municipal judge conducts a preliminary investigation, he performs a non-judicial function. His function is merely executive in nature. As such, the findings of an investigating judge are subject to review by the Provincial Fiscal whose findings in turn may also be reviewed by the Secretary of Justice in appropriate cases. Hence, after conducting the preliminary investigation, it is the ministerial duty of the investigating judge to transmit within ten (10) days after the conclusion thereof the resolution of the case together with the entire records to the Provincial Prosecutor in

accordance with Section 5 of Rule 112, regardless of his belief or opinion of the character of the crime committed.[14]

We are not unmindful of the occasional mistakes or errors of judgment which judges may commit but judges are also expected to show more than a cursory acquaintance with the elementary rules governing procedure as well as settled authoritative doctrines.

We note that respondent judge has compulsorily retired from office on May 23, 2000 having reached the age of 70. Since the administrative complaint was filed in 1998 before the approval of his retirement, this Court retains authority to pursue the administrative complaint against him. Cessation from office because of retirement does not warrant the dismissal of the administrative complaint filed against him while he was still in service.[15]

IN VIEW OF THE FOREGOING, the Court Resolved to impose a FINE of P5,000 to be deducted from whatever retirement benefits may be due him.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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\* SEC. 5. Duty of investigating judge. - Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, stating briefly the findings of facts and the law supporting his action, together with the entire records of the case, which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused; (d) the order of release of the accused and cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Should the provincial or city fiscal disagree with the findings of the investigating judge on the existence of probable cause, the fiscal's ruling shall prevail, but he must explain his action in writing furnishing the parties with copies of his resolution, not later than thirty (30) days from receipt of the records from the judge. If the accused is detained, the fiscal shall order his release.\*

[1] Annex "A."

[2] Annexes "A-1," "A-2," "A-3."

[3] Annex "B-1."

[4] Annex "B."

[5] Letter-Complaint, p. 2.

[6] Annex "E."

[7] Annex "F."

**[8] 293 SCRA 1 (1998).**

[9] Additional Comment, p.3.

**[10] 89 SCRA 101 (1979).**

**[11] 265 SCRA 156 (1996).**

[12] Gozos v. Tac-an, 300 SCRA 265(1998).

[13] Rule 112, Section 2, RULES OF COURT.

[14] Balagapi, Jr. v. Duquilla, 238 SCRA 645 (1994)

[15] See Tuliao vs. Ramos, 284 SCRA 378 (1998).

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