

ANTONIO C. LUCERO, COMPLAINANT, VS. HON. CARLOS B. SALAZAR, RESPONDENT.*Adm. Mat. No. 921-MJ. August 19, 1982*

Ponente: DE CASTRO, J.

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In a letter-complaint[1] dated March 3, 1975, complainant Antonio C. Lucero, in his capacity as Acting Executive Director of the defunct Special Cabinet Committee, Ministry of National Defense, charged respondent Carlos B. Salazar, formerly Municipal Judge of San Miguel, now Municipal Circuit Judge of the 15th Municipal Circuit Court of Iloilo, with having taken cognizance of Criminal Case No. 559 entitled "People of the Philippines, versus, Rosendo Sabidong (alias Sendoy)" for Illegal possession of Firearm, over which respondent judge had no jurisdiction, the same being within the exclusive jurisdiction of the Military Tribunal, and for having ordered the provisional dismissal of said criminal case on the justification that the accused did not intend to commit the offense charged, disregarding the fact that the law infracted does not admit of explanations as regards the motive of the accused for the possession of the firearm, the same being *mala prohibita*.

Having been required to comment on the charge, respondent submitted his comment[2] dated April 3, 1975 stating that the questioned order dated March 23, 1974 merely recommended the provisional dismissal of the case against the accused, and that if ever there was any error committed by respondent, the same was without malice as it was done with utmost good faith to the best of his knowledge and conscience under the facts and circumstances to do justice to the accused.

In the resolution[3] of February 8, 1980, this case was referred to Executive Judge Josue Bellosillo of the Court of First Instance of Iloilo for investigation, report and recommendation. Subsequently, the investigating judge submitted his report and recommendation[4] dated January 21, 1982, the pertinent portion of which is hereunder quoted, to wit:

"As may be gleaned from the 1st Indorsement of the Judicial Consultant dated March 6, 1975, the respondent is charged with (a) having taken cognizance of Crim. Case No. 559 entitled "People vs. Rosendo Sabidong" for illegal possession of firearm over which said respondent has no jurisdiction, and (b) for having provisionally dismissed the case on ground of lack of intent to commit the offense despite the same being *mala prohibita*.

"As regards charge (a), the record shows that respondent did not take cognizance of Crim. Case No. 559 as a trial court but conducted only a preliminary investigation although, admittedly, he dwelt extensively on the merits of the case. However, even if he did so, it could only be to satisfy his judicious mind, which is well within his prerogative to do, and thuswise no harm could be caused to the parties; nor was there any objection thereto. His conclusion, however, that the accused was not criminally liable for illegal possession of firearm because he had no intention to commit the crime may not be justified, hence, erroneous considering that it is *mala prohibita*.

"But, in the absence of malice, and none is imputed to respondent, it may be treated as an error of the mind which is not necessarily reprehensible. Significantly, the questioned order states in its dispositive portion, "it is

recommended that the case against the accused be dismissed provisionally" (underscoring supplied), which simply shows that the order is recommendatory in nature.

"Charge (b) appears to be closely interrelated with the first, or is a consequence thereof. As already observed, respondent did not provisionally dismiss the case but only recommended its provisional dismissal. However, such recommendation is anchored on lack of intent to commit the offense, which is erroneous because it is mala prohibita. Again, as already stated, it can be a mistake of the mind, sans malice, hence, pardonable.

"There is however in the Order of respondent judge which, although not specified as among the charges against him, nevertheless deserves serious consideration this being an administrative case. It is that portion of his Order which directs the immediate release of the accused.

"General Order No. 12 dated September 30, 1972, as amended, particularly paragraph 8 thereof, vests in the Military Tribunals the exclusive jurisdiction over cases for illegal possession of firearms. Implementing said General Order No. 12, the Department of Justice, on October 27, 1972, issued an unnumbered circular providing guidelines to municipal judges relative to, among others, the disposition of cases within the exclusive jurisdiction of Military Tribunals such as those for illegal possession of firearms. Par. 2 of said circular states:

'Where the offense charged falls within the exclusive jurisdiction of Military Tribunals pursuant to General Order No. 12 dated September 30, 1972, as amended, but is not one of those mentioned in par. 1 (a), (b) and (c) above (with respect to which he shall not conduct preliminary investigation) the judge or fiscal shall, after the preliminary investigation shall have been concluded, submit a report with the appropriate recommendation (for dismissal or prosecution) to the Secretary of National Defense. The report shall be transmitted through the PC Provincial Commander in areas outside of Greater Manila.'

"While the respondent seems to have complied with General Order No. 12 and its implementing circular above-quoted, he has obviously violated General Order No. 6 which states in its last paragraph:

'NOW, THEREFORE, I, FERDINAND E. MARCOS, commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, do hereby order that henceforth and until otherwise ordered by me or by my duly designated representative, no person shall keep, possess or carry outside of his residence any firearm unless such person is duly authorized to keep, possess or carry out such firearm, and any person violating this Order shall forthwith be arrested and taken into custody and held for the duration of the emergency unless ordered released by me or by my duly designated representative.'

"Apparently, respondent judge failed to observe the foregoing Order in directing the immediate release of the accused who should have been retained in custody until otherwise ordered by His Excellency, the President, or his duly designated representative, even assuming that there was no prima facie evidence against the accused. If on this score alone, respondent should be administratively held to account. However, his plea that "if ever there was any error committed by the undersigned, the same was without any malice - it was done with utmost good faith and with the paramount thought to the best of my knowledge and conscience under the facts and circumstances to do justice to the accused" need not fall on deaf ears as it rings with the sincerity of an erring public servant, and there being no showing that his actuation was motivated by malice, it may be allowed to pass as a mere error of judgment, or unfamiliarity with appropriate legal rules and procedures evolved shortly after the declaration of a state of emergency in this country when decrees, general orders, letters of instruction and circulars had barely been promulgated and hardly disseminated to all.

"It may be worth to emphasize at this point that, in the administration of justice, it is expected that men who wield authority should be the paragon of honesty and efficiency, and possessed with adequate knowledge of the fundamentals of the law and jurisprudence if only to preserve sacred and inviolate the trust and confidence of the people they serve.

"WHEREFORE, premises considered, it is respectfully recommended that respondent be reprimanded and advised that he should be more judicious and circumspect in the exercise of his functions, with a warning that a repetition of the same or similar act in the future will be dealt with more severely."

Then Court Administrator, now an Associate Justice of this Court, Lorenzo Relova and Deputy Court Administrator Arturo B. Buena, in their respective memoranda^[5] submitted to this Court, both recommended the approval of the report and recommendation of the inquest judge. Finding no reason to go against the report and recommendation of the investigating Judge which merited favorable action on the part of the Court Administrator and one of his deputies, being indeed duly supported by the records of the case, the said report and recommendation are hereby approved.

WHEREFORE, respondent Judge Carlos B. Salazar is hereby reprimanded and admonished to be more judicious and circumspect in the exercise of his judicial function, with warning that a repetition of the same or similar act in the future will be dealt with more severely.

Let a copy of this decision be entered in his personal record.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

[1] p. 1, Rollo.

[2] p. 15, Id.

[3] p. 16, Id.

[4] pp. 32-40, Id.

[5] pp. 42-43; pp. 44-50, Rollo.

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