

OFFICE OF THE COURT ADMINISTRATOR VS. MAMINTING A. MALLI, OFFICER-IN-CHARGE, REGIONAL TRIAL COURT, BR. 15, COTABATO CITY, RESPONDENT.

A.M. No. P-92-684. February 13, 1995

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PER CURIAM:

In June, 1992 the Court received a communication (2nd indorsement dated August 5, 1991) from the Office of the Ombudsman transmitting:

- 1) the first indorsement dated June 26, 1991 of the Director of the National Bureau of Investigation forwarding to the Ombudsman the two (2) documents hereunder mentioned;
- 2) the Investigation Report dated November 26, 1990 of Atty. Salvador R. Ranin, CEMRO Regional Director, NBI, Cotabato City, to the effect that there was prima facie evidence substantiating the letter-complaint of one Siao Ching Ho [1], accusing Maminting A. Malli, Officer-in-Charge (OIC) of Branch 15, Regional Trial Court of Cotabato City (as well as Prosecutor Rodolfo Yanson) of serious neglect of duty relative to the delay in the turnover of the records of Criminal Case No. 391, the loss of some vital documents, and the misappropriation of the cash bail bond posted by the accused in said case; and
- 3) the Evaluation Comment dated June 26, 1991 of Atty. Gerarda G. Galang, Chief, Legal & Evaluation Division (LED), NBI (based on the Ranin report just cited), recommending inter alia that Malli be prosecuted criminally [2] and administratively. [3]

The matter was in due course referred by the Office of the Court Administrator to the Court En Banc which, after deliberating thereon, issued a Resolution on October 24, 1991 directing the former to draw up the proper charges against OIC Malli. A complaint was accordingly prepared and filed in February, 1992 charging Malli with "infidelity in the custody of documents and misappropriation of public funds," committed as follows:

"A. That on or about August 20, 1990, Officer-in-Charge Ma(n)inting A. Malli turned over the records of Criminal Case No. 391 to Executive Judge Emmanuel Badoy, RTC, Cotabato City, for re-raffling after about forty seven (47) days from the Order for the transmittal issued by Judge Ismael G. Bagundang on July 4, 1990, and with several documents missing from the records, including, among others, the original copy of the Information, supporting Affidavits, Resolution of Investigating Fiscal, copy of the Warrant of Arrest issued, Order of Release/Refrain from Arrest, Official receipt of the Cash Bond which respondent without legal authority turned over to Prosecutor Rodolfo Yanson, which documents later disappeared.

"B. That, further, Officer-in-Charge Malli, RTC, Branch 15, Cotabato City willfully and unlawfully allowed the Prosecutor handling the case to remove the same records from his Office for the use of said Prosecutor; and

"C. That, finally, Officer-in-Charge Malli willfully and unlawfully and without any legal authority, on or about August 8, 1990, delivered to Prosecutor Rodolfo Yanson, the P2,000.00 cash bond filed by accused Floresto Balofinos in the subject criminal case, who later misappropriated said amount."

The Court required Malli to answer the complaint; this he did, under date of April 20, 1992. Malli denied the charges. He alleged that the documents in question were borrowed by Prosecutor Yanson and never returned to the court despite repeated demands for their return; that it was in fact Eduardo C. Gesulga, Jr., Staff Assistant II, RTC, Branch 15, assigned as Docket Clerk, who handed over the documents in Criminal Case No. 391 (now missing) to Prosecutor Yanson, without his (Malli's) knowledge, and on subsequently learning of such transfer, he (Malli), immediately reported it to Judge Bagundang; that the Judge repeatedly called Prosecutor Yanson to his chambers to request the return of the documents, to no avail, and that eventually, the missing documents were reconstructed from available duplicate copies. Malli further declared that such lending of records or documents of a case should be permitted, as otherwise, it may be tantamount to a violation of the Constitutional provision granting any party free access to the court. He also denied misappropriating the cash bond in Criminal Case No. 391 amounting to P2,000, since "not a single centavo was used by him."

By Resolution dated July 9, 1992 the Court referred the case to Executive Judge Emmanuel D. Badoy, RTC, Branch 13, Cotabato City, for investigation, report and recommendation. After conducting the requisite investigation — before commencement of which Malli was required to, and did file another answer to the complaint, with annexes [4] — Judge Badoy submitted his "Report and Recommendation" dated November 23, 1992. His Honor recommended that:

a)

"As to the charge under par. A and B of the Complaint, for being guilty of Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service, Malli be dismissed from the service, but for humanitarian reason, without forfeiture of earned benefits."

b)

"As to the charge under par. C of the Complaint, that Malli be criminally charged for Malversation through negligence and abandonment under Art. 217 of the RPC with administrative sanction of dismissal from the service with forfeiture of benefits for allowing himself to be persuaded, induced or influenced to commit malversation, and therefore, conduct prejudicial to the best interest of the service, which is also a violation of Sec. 3 (a) of R.A. 3019 (Anti-Graft and Corrupt Practices Act)."

In his report, Judge Badoy set forth the following findings and conclusions:

"As to the charge under paragraph A of the Complaint, the respondent in his Answer alleged that he turned over the records (meaning Criminal Case No. 391 entitled Pp vs. Floresto Balofiños for Violation of BP Blg. 22) pursuant to the Order of the Court (meaning RTC 15) but disclaims responsibility for the delay because according to him the Order of the Court (meaning RTC 15) 'was never filed with the Office of the Clerk of Court, hence, has no binding or legal effect;' The reason why said order was not filed is due to the untimely arrival of Atty. Midpantao Adil who personally informed the respondent that he (Atty. Midpantao Adil) is entering his appearance as counsel for the accused. The respondent showed to the counsel the Order of the Court transferring the case record to RTC Branch 14 and said counsel requested to hold in abeyance the order and intimated that since the case is calendared for trial, he (Atty. Adil) will orally argue on the merit of the request; undersigned respondent brought the Order to Presiding Judge Ismael Bagundang and informed him of the request of Atty. Midpantao Adil who entered his appearance and Hon. Judge Ismael Bagundang granted the request, hence, the delay of the transfer of the record from RTC 15 to RTC Branch 14.

The Counter-Affidavit of the Respondent, incorporated as Annex "A-3" to his Answer shows that the respondent was aware of the letter request of the undersigned Investigator dated June 29, 1990 copy of which is marked as Exhibit "A" of this Report and the July 4, 1990 Order of the Hon. Judge Ismael Bagundang (Exhibit "B" of this

Report) directing him to transfer the records of Criminal Case No. 391 to RTC 13 and 14 pursuant to the said letter-request of Judge Badoy. Respondent did not comply with the said Order as according to him Atty. Midpantao Adil counsel for the accused entered his appearance for the first time after July 4, 1990 and requested that the transfer of the records of Crim. Case No. 391 be held in abeyance which was granted by Judge Bagundang.* * *

This Investigator does not find Respondent's above-claim contained in his Answer and in his Annex 'A-3' to his Answer to be true. Firstly, the claim of Respondent that the Hon. Judge Ismael G. Bagundang granted Atty. Adil's request is not supported by any Order or even by the Affidavit of said Judge marked as Annex 'A-4' to Respondent's Answer, and secondly, Atty. Adil entered his appearance as page 31 of the records of said Crim. Case No. 391 shows that Atty. Adil entered his appearance as counsel for the accused on May 29, 1989, copy of said counsel's appearance is marked as Exhibit 'C' of this report and Recommendation. When confronted about Exhibit 'C', Respondents offered the excuse that he did not know anything about this appearance because Mr. Eduardo Gesulga, Jr. is the one in charge of the records of Crim. Case No. 391.

This Investigator finds Respondent's reason to be a lame excuse because when he anchored his defense on Atty. Adil's entering his appearance for the first time after Hon. Judge Bagundang issued his July 4, 1990 Order, Respondent was certain that Atty. Adil entered his appearance for the first time after July 4, 1990 but before August 20, 1990 when the records of Criminal Case No. 391 were forwarded to RTC Branches 13 and 14, otherwise, he would have not relied on this kind of defense.

This Investigator therefore finds the Respondent guilty as charged of delay in turning over the records to RTC Branches 13 and 14 by refusing to comply with the July 4, 1990 Order of the Hon. Judge Bagundang without sufficient justification, thus, discriminating against the complaining witness in Crim. Case No. 391.

As to the missing records, Respondent in his Answer admitted that there were missing documents when the records were turned over to Judge Emmanuel D. Badoy. Respondent also admitted during the investigation that the documents listed in the letter of Officer-in-Charge Abundio Balanag dated August 20, 1990, to the Respondent marked as Exhibit 'D' of this Report and Recommendation were missing when the turn over of the records were made. Respondent however again offered the excuse that Mr. Eduardo Gesulga, Jr. was in charged of the records of Crim. Case No. 391 although he admitted that he was the Officer-in-Charge of RTC 15. When asked by this Investigator if he exercised supervision over Mr. Gesulga, Respondent declared that there was no need to supervise the work of Mr. Gesulga.

Had he exercised the supervision required of him as Officer-in--Charge, he could have immediately known that Mr. Gesulga allowed Prosecutor Rodolfo Yanson to bring the records outside without authority from the Court or without the corresponding receipt therefor. He could have immediately retrieved said records from Prosecutor Yanson to prevent the loss of the documents discovered by Mr. Balanag to be missing from the case folder.

If he performed his duty by safely keeping the records, the same could not have been brought out by Prosecutor Yanson, without the proper safeguards.

This Investigator finds the defense of the Respondent untenable because as the Officer-in-Charge it is his duty to 'safely keep all records, papers, files, exhibits' committed to his charge. (Sec. 7, Rule 136 of the Rules of Court) Also, as Officer-in-Charge it is Respondent's duty to supervise and manage court dockets and records. He is therefore guilty of Gross neglect of duty.

As regards the cash bond of P2,000, the Respondent denied that he delivered the said amount to Prosecutor Rodolfo Yanson. This is contained in his Answer and he re-asserted this during the investigation. During the

investigation, Respondent declared that Prosecutor Yanson together with a person whom he later learned to be the accused worked out the reduction of the bail bond from P5,000 to P2,000 with the Hon. Judge Ismael G. Bagundang on December 21, 1988 and in the morning of the same day, the Hon. Judge Bagundang issued the Order to refrain from arresting the accused.

At the time the Order to refrain from arrest was issued, the cash bond of P2,000 was not yet turned over to the Respondent so that Respondent did not yet issue an Official Receipt for the said cash bond. Respondent declared during the investigation that Prosecutor Yanson held on to the money, then once outside the Judge's chamber and in front of the court personnel Prosecutor Yanson told Respondent that he will borrow the money due to extreme need of the family, promising to return the same in a short time since he expected to receive his pay check anytime therefrom. The respondent said he did not want to embarrass Prosecutor Yanson in front of the court personnel and besides he believed that Prosecutor Yanson will turn over the money as promised.

When asked by this Investigator if he called Prosecutor Yanson away from the Court personnel, and asked for the cash bond so that he will not be embarrassed before them, Respondent said 'No.' When asked by this Investigator if he reported to the Hon. Judge Bagundang that Prosecutor Yanson did not turn over the money to him so that the Hon. Judge Bagundang can recall the Order to Refrain From Arrest, he likewise answered 'No.'

When Prosecutor Yanson was borrowing the money, Respondent said that he reminded him that the Prosecutor was once a Clerk of Court and therefore knew that it was wrong to borrow the money. When asked by this Investigator if Respondent knew that it was wrong for him not to take possession of the cash bond and issue the corresponding receipt, he answered 'Yes.' Respondent in fact declared that he is willing to suffer the consequences therefor. Respondent issued Official Receipt No. 7901209 only on August 1, 1990 in the amount of P2,000 for the said cash bond, more than 2 1/2 years from the time Judge Bagundang issued the order to refrain from arrest on December 21, 1988. Respondent also admitted that while the official receipt he issued was for P2,000, Prosecutor Yanson turned over to him the amount of P1,000 only. Since the receipt shows that the amount covered thereby is P2,000.00, respondent is short of P1,000.00.

As Officer-in-Charge, Respondent is an accountable officer. This Investigator therefore finds him guilty of Malversation of Public Funds, fiduciary funds in this case, through negligence and abandonment under Article 217 of the Revised Penal Code because he was and he admitted that he was short of his money accountability.

Respondent is therefore administratively liable for conduct prejudicial to the best interest of the service, not only because of shortage of funds in his possession but also because he deliberately did not report to the Hon. Judge Bagundang that the amount of P2,000.00 was not turned over to him by Prosecutor Yanson, thus, allowing the accused to enjoy provisional liberty without a bond."

A painstaking examination of the record convinces the Court of the correctness of Judge Badoy's findings. The evidence does indeed adequately establish that for all of forty-seven (47) days, respondent Malli failed and refused, without valid cause, to comply with the instruction given to him on July 4, 1990 to turn over the record of Criminal Case No. 391 to the Executive Judge for re-raffling; that when he finally did so on August 20, 1990, several documents were missing therefrom (e.g., the original copy of the information, supporting affidavits, the resolution of the Investigating Fiscal, copy of the warrant of arrest, the order of release, the official receipt for the cash bond of the accused); that removal of these documents from the record was effected by Prosecutor Rodolfo Yanson with the knowledge and consent of respondent; that for more than two (2) years, Malli neglected to issue the official receipt for the cash bond of P2,000.00 given by the accused in Criminal Case No. 391; that on August 8, 1990, contrary to relevant regulations and without authority whatever, respondent Malli delivered to the same Prosecutor Yanson, at the latter's request and on his undertaking to return the same, said cash bond of P2,000.00;

and that Prosecutor Yanson eventually returned only the sum of P1,000.00 to Malli.

The record establishes, too, the falsity of Malli's proffered defense for the delay in transmittal of the records of Criminal Case No. 391 — i.e., the supposed request of Atty. Midpantao Adil, upon entering his appearance in the case in July, 1990, to defer the transmittal, which request was allegedly approved by Judge Ismael Bagundang — it appearing from the record, on the contrary, that Atty. Adil had in fact entered his appearance a year earlier, on May 29, 1989, and Judge Bagundang had never approved any request for deferment.

The record also shows that Prosecutor Yanson got the missing documents directly from Eduardo Gesulga, Jr., the Court employee (docket clerk) directly in charge of the pertinent records, and that he was able to do so, and to retain the documents in his possession indefinitely, because of the failure of Malli to exercise supervision over his subordinate, Gesulga, his opinion being that there was no need for such supervision.

Respondent Malli is guilty of gross neglect of duty and conduct prejudicial to the interest of the service, as well as a violation of Circular No. 5 dated November 25, 1982 and Circular No. 5-A dated December 3, 1982 — relative to the deposit of funds of fiduciary character (See *Ferriols v. Hiam*, A.M. No. P-90-414, August 9, 1993, 225 SCRA 205, 209-210), if not indeed of malversation through negligence or abandonment under Article 217 of the Revised Penal Code, and of violation of Section 3 (a) of R.A. 3019 (the Anti-Graft and Corrupt Practices Act). He has been shown to lack the requisite professional and moral qualifications to continue as an employee in the judiciary (See *Angeles v. Bantug, et al.*, 209 SCRA 413).

WHEREFORE, respondent Maminting A. Malli, Officer-in-Charge of the Regional Trial Court (Branch 15), Cotabato City, is **DISMISSED FROM THE SERVICE**, with forfeiture of all retirement benefits and accrued leave credits, if any, and with disqualification for reemployment in any branch or instrumentality of the Government, including government-owned or controlled corporations. Let copies of this decision be furnished the Honorable Secretary of Justice for the filing of such criminal charges against respondent Malli as well as against Prosecutor Rodolfo Yanson as may be warranted.

IT IS SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.
Francisco, J., no part.

[1] Complaining witness in Criminal Case No. 391 of the RTC (Br. 13), Cotabato City, against Floresto Balofiños for violation of BP 22

[2] For removal, concealment or destruction of documents under Article 226 of the Revised Penal Code or falsification of an official document under par. 4, Article 171 of the same Code, and for violation of paragraph a, Section 3 of R.A. 3019

[3] For removing or causing removal of some documents in Criminal Case No. 391 leading to the loss thereof; for failing to issue an official receipt for the cash bond of accused (Balofiños) in said case; for allowing the prosecutor on case to take the amount given as cash bond; and for making it appear that the cash bond was posted by said accused on a later date

[4] Annexes A, A-1, A-2, A-3, A-4, A-5

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