IMELDA S. ENRIQUEZ, PETITIONER, VS. JUDGE OLEGARIO R. SARMIENTO, JR. RESPONDENT.

A.M. NO. RTJ-06-2011 [Formerly OCA IPI No. 04-2083-RTJ]. August 07, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The facts that gave rise to the filing of the present administrative case, as culled from the rollo, follow:

Following the death in Cebu City of one Mark James Enriquez on July 21, 2003, Cebu City Prosecutor Jesus P. Feliciano filed before the Regional Trial Court (RTC) of Cebu on July 23, 2003 an Information[1] charging Sherwin Que a.k.a. Bungol, a certain Junjun, and nine Does with Murder.

Warrants for the arrest[2] of Sherwin Que a.k.a. Bungol, John Doe, Peter Doe, Paul Doe, Richard Doe, Arnold Doe, Dexter Doe, James Doe, Robert Doe, and Arthur Doe were thereupon issued by the Executive Judge of the Cebu RTC.

On the invitation[3] of the 7[th] Regional Criminal Investigation and Detection Group Unit (CIDGU) at Camp Sotero Cabahug in Cebu City, Anthony John Apura (Apura), accompanied by his father, repaired to said office on August 1, 2003.

An "Inquest Investigation" of Apura was conducted on August 2, 2003, a Saturday, by a prosecutor who recommended the impleading of Apura as co-accused in the case. A warrant for Apura's arrest was on even date issued by Judge Apolinario Taypin, Presiding Judge of Branch 12 of the Cebu RTC, who was on duty that day.[4] Apura was immediately arrested and detained.

Apura assailed the legality of his arrest via a "Motion to Dismiss" the Information, which he filed on August 5, 2003 before Branch 24 of the Cebu RTC to which the case was raffled.

By Order of August 13, 2003, Branch 24 Presiding Judge Olegario R. Sarmiento, Jr., herein respondent, "believ[ing] that there [wa]s lack of preliminary investigation," ordered the remand of the case against Apura to the Cebu City Prosecutor's Office for preliminary investigation, and ordered Apura's release from custody on a bail of P20,000. Respondent's said Order reads:

> Accused-movant Anthony John Apura alleged in his Motion to Dismiss that his arrest was illegal because he [went] to the police station upon invitation but immediately thereafter he was placed under custody of the police. His arrest does not fall under a warrantless arrest nor it is within the purview of "hot pursuit" concept, considering that the subject incident happened on July 19, 2003 and he was placed under arrest on August 2, 2003.
>
> The Court believes that there is lack of preliminary investigation on the part of accused Anthony John Apura. The warrant of arrest issued on July 24, 2003 on the basis of the original information filed on July 24, 2003 cannot be made as valid basis for the arrest of the accused Anthony John Apura on August 2, 2003. The court notes that accused Anthony John Apura is not the certain "Junjun" mentioned in the original Information.

> What appalled the Court is the manner by which the accused was placed under custody. The actuation wherein a person is invited to the police station for investigation and to place said person under detention when his appearance therein was only to explain his side thereof, is foreboding.
>
> WHEREFORE, short of declaring the arrest of movant illegal, and acting on the Motion to Dismiss, remand this case to the Cebu City Prosecution Office for Prosecutor Jesus Feliciano to conduct preliminary investigation on Anthony John Apura and said accused is ordered released from custody, being admitted to bail in the amount of PhP 20,000.000 in cash, pending preliminary investigation, pursuant to Section 7 of Rule 112.
>
> Furnish parties and counsels copy of this Order and Prosecutor Feliciano, who is directed to submit his preliminary investigation report sixty (60) days from today.[5] (Emphasis and underscoring supplied)

Hence, arose the present administrative complaint filed on September 7, 2004 by petitioner Imelda S. Enriquez, the mother of the deceased Mark James Enriquez, against respondent for knowingly rendering an unjust order and gross ignorance of the law and procedure for ordering the release of Apura on bail without first conducting a hearing for the purpose.

To the complaint, respondent gives the following comment:

> Respondent judge was trying to check the abuse committed by the State through its law enforcement agency upon the rights of an accused person guaranteed to him by no less than the Constitution. The inquest proceedings which followed . . . the "invitation" was [sic] highly irregular. The prosecutors knew this fact, which is why, during the hearing on the "Motion to Dismiss", they agreed for [sic] the remand of the record for preliminary investigation.
>
> Had he granted the Motion to Dismiss, on the ground that the trial court did not acquire jurisdiction over the person of Apura because of the illegal arrest, accused would be released just the same. Yet, to strike a balance of the possible abuse on the rights of accused and the effort of the police at prosecution of crimes, respondent did not categorically declare the arrest illegal but allowed the accused to post cash bail bond with an accompanying "hold-departure" order. At least, to get hold of the accused while preliminary investigation is conducted.[6] (Emphasis and underscoring supplied)

By Report dated October 4, 2005, the Office of the Court Administrator (OCA), finding that respondent violated Section 7, Rule 114 of the Revised Rules of Criminal Procedure reading:

> SEC. 7. Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. – No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution,

recommended that respondent be fined in the amount of P21,000 for gross ignorance of the law.[7]

By Resolution[8] dated December 14, 2005, this Court ordered the parties to manifest whether they are submitting the case on the basis of the pleadings/records already filed and submitted, within ten days from notice. Respondent responded in the affirmative in a Manifestation[9] received on January 27, 2006 to which he attached additional papers in support of his case. On petitioner's part, she also responded in the affirmative by Manifestation[10] received on January 31, 2006.

An application to bail from Murder, for which Apura was indicted on August 2, 2003 when it was a capital offense,[11] now punishable by reclusion perpetua, calls for a hearing, as called for under Section 8 of Rule 114 reading:

> SEC. 8. Burden of proof in bail application. – At the hearing of an application for bail filed by a person who is in custody of the commission of an offense punishable by death, reclusion perpetua, or life imprisonment, the

> prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify. (Italics in the original),

in order to determine whether the evidence of guilt against the accused is strong.[12]

In the case at bar, respondent ordered Apura to be released on bail, without conducting a prior hearing.

The lack of preliminary investigation, in light of the finding that Apura was not lawfully arrested without warrant, he having gone to the CIDGU in response to its invitation, did not justify respondent's disregard of the mandatory procedure governing the grant of bail.

Indeed, a preliminary investigation should have been conducted before the filing of the Amended Information. A preliminary investigation is a proceeding distinct from an inquest. A preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[13] An inquest is "a summary inquiry conducted by a prosecutor for the purpose of determining whether the warrantless arrest of a person was based on probable cause."[14]

Where the penalty prescribed by law for an offense is at least four years, two months and one day of imprisonment without regard to the fine, a preliminary investigation must be conducted before the filing of a complaint or information for such offense.[15] The conduct of an inquest investigation does not fulfill the requirement for the conduct of a preliminary investigation before the filing of an information or complaint involving any such offenses, except when the accused was lawfully arrested without a warrant.[16]

In the case at bar, the accused was not even arrested. He repaired to the CIDGU on its invitation. He should thus have been subjected to a preliminary investigation, not a mere inquest investigation.[17]

An Amended Information was subsequently filed, however, upon which a Warrant of Arrest was issued against Apura by Judge Taypin. By so issuing a warrant, Judge Taypin is presumed to have , before issuing the warrant, previously regularly discharged his duty to personally determine the existence of probable cause against the accused, as mandated by Section 6 of Rule 112, which provides:

> SEC. 6. When warrant of arrest may issue. – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.
>
> x x x x (Underscoring supplied)

At all events, the absence of a preliminary investigation did not justify Apura's release, the defect not having nullified the information and the warrant of arrest against him. Thus this Court held in Larranaga v. CA:[18]

> We hold, therefore, that petitioner's detention at the Bagong Buhay Rehabilitation Center is legal in view of the information and the warrant of arrest against him. The absence of a preliminary investigation will not justify petitioner's release because such defect did not nullify the information and the warrant of arrest against him.

> We ruled in Sanciangco, Jr. v. People:[19]
>
> > The absence of preliminary investigations does not affect the court's jurisdiction over the case. Nor do they impair the validity of the information or otherwise render it defective; but, if there were no preliminary investigations and the defendants, before entering their plea, invite the attention of the court to their absence, the court, instead of dismissing the information, should conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted. (Citation omitted)

In fine, respondent's release on bail of Apura, without priorly conducting a hearing for the purpose, betrays his gross ignorance of the law, it being settled that where the law involved is simple and elementary, lack of observance thereof constitutes gross ignorance of the law.[20]

Gross ignorance of the law may be punished with 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 or controlled corporations; 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.[21]

This Court, however, appreciates as mitigating in respondent's favor his issuance of a hold-departure order against the accused.[22] It is in this light that it reduces the recommended penalty of fine to P15,000.

WHEREFORE, respondent, Judge Olegario R. Sarmiento, Jr., is found guilty of gross ignorance of the law and is FINED Fifteen Thousand (P15,000) Pesos, with warning that a repetition of the same or similar infraction shall be dealt with more severely.

SO ORDERED.

Quisumbing, Carpio, Tinga and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 47-48.

[2] Id. at 49.

[3] Id. at 2, 55.

[4] Id. at 236.

[5] Id. at 32.

[6] Id. at 154.

[7] Id. at 248-251.

[8] Id. at 252.

[9] Id. at 253-265.

[10] Id. at 266.

[11] Vide REVISED PENAL CODE, Article 248.

[12] Basco v. Rapatalo, A.M. No. RTJ-96-1335, March 5, 1997, 269 SCRA 220, 226.

[13] Rules of Court, Rule 112, Section 1.

[14] Bautista, Basic Criminal Procedure, Rex Bookstore, Inc.: Manila, Philippines, 2003, at 39.

[15] Supra note 13.

[16] Vide RULES OF COURT, Rule 112, Section 7; Larranaga v. Court of Appeals, G.R. No. 130644, October 27, 1997, 281 SCRA 254, at 258.

[17] Vide Larannaga v. Court of Appeals, supra.

[18] 351 Phil. 75, 90 (1998).

[19]G.R. No. L-72830, March 24, 1987, 149 SCRA 1, 3-4.

[20] Jamora v. Bersales, A.M. No. MTJ-04-1529, December 16, 2004, 447 SCRA 20, 32.

[21] A.M. No. 01-8-10-SC, Sections 8 (9) and 11.

[22] Supra note 1 at 33-34.

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