

MURILLO O. OMADTO, COMPLAINANT, VS. FRANCISCO G. EVANGELISTA, SPECIAL DEPUTY CLERK OF COURT OF FIRST INSTANCE, PASIG, RIZAL, RESPONDENT.

A.M. No. P-25. November 28, 1975

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

On October 31, 1965, Murillo Omadto filed a letter-complaint with the Office of the Solicitor General denouncing Francisco Evangelista, herein respondent, for issuing a Certificate of Court Clearance to one See Tun, a Chinese citizen, who was sentenced to life imprisonment in Criminal Case No. 8749, for murder by the Court of First Instance of Pasig, Rizal, thus, enabling the said See Tun to depart for Hongkong on July 12, 1965 (p. 19, rec.).

This certification reads:

"TO WHOM IT MAY CONCERN:

"THIS IS TO CERTIFY that according to the records now available in this Office, there is no criminal case filed, pending or disposed of against one SEE TUN a resident of 1822 Int. 23, Diwata St. Manila.

"Issued upon request of See Tun this 7th day of July 1965, for the purpose going abroad.

BENITO MACROHON

Clerk of Court

(SEAL)

By:

(SGD) F. G. EVANGELISTA

Special Deputy Clerk of Court

Res. Certificate A-0396184

Issued at Manila

On June 4, 1965

A-206133

Issued at Cebu City

On January 13, 1951

CFI – Required in the "B" List of Cert. Sec.

(Initialed) D. IZON

7/12

Fee – P5.00

O.R. No. F-2647010

Manila – Oct. 27, 1975

Legal Fee – P2.00

O.R. No. F-3684101

(Issuance authorized by Acting Commissioner M.P. Vivo)

Certified True and Correct Copy:

(SGD.) REGINO M. DEL ROSARIO

Chief, Records Section

Bureau of Immigration

Manila"

(Exh. "B", p. 208, rec.).

The complaint was then referred to the Secretary of Justice, who indorsed the same to the Clerk of Court, Court of First Instance, Pasig, Rizal for investigation.

In his comment dated December 20, 1965, respondent denied the charge and claimed that the court clearance issued by him was to a person named See Tun who has no alias whereas the accused in the aforesaid criminal case is See Tun alias Antonio Go, alias Antonio Reyes; that the address of See Tun to whom the clearance was issued is 1822 Int. 23, Diwata Street, Manila, while the address of See Tun, the convicted accused, is 1042-A Mabini Street, Caloocan City; that when he verified the records in the Bureau of Immigration, it was disclosed that See Tun who was issued the court clearance never resided at 1042-A Mabini Street, Caloocan City; that respondent required See Tun, to submit two (2) affidavits with his photograph attesting that he is not the same See Tun who was accused and convicted in the aforesaid criminal case; that the photograph attached to See Tun's affidavit "is truly that of the applicant x x x and definitely not of the accused See Tun, whom I can readily identify because I constantly see him in court x x x "; that what baffles respondent is the fact that in the clearance issued by him to See Tun, there appears ACR No. A-206133, issued at Cebu City on January 13, 1951, although he claims that he did not indicate the said ACR but only See Tun's residence certificate A; and that he has never been involved in any irregularity during the nineteen (19) years that he has been in government service (p. 7, rec.).

On November 2, 1965, the same complaint was sent by the complainant to the National Bureau of Investigation (p. 212, rec.).

On January 3, 1966, former Clerk of Court Benito Macrohon set the case for hearing. However, the case could not be investigated due to several postponements requested by the parties, who agreed to the deferment of the hearing until after the criminal aspect of the same shall have been investigated by the National Bureau of Investigation.

The case was finally set for hearing on October 24, 1966. On this date, complainant moved for postponement submitting a copy of a 1st Indorsement dated October 20, 1966 (p. 63, rec.) of the Chief of State Prosecutor, addressed to the Provincial Fiscal of Rizal, suggesting deferment of said hearing until after the termination of the investigation being conducted by the Provincial Fiscal, who was requested to investigate the matter by complainant himself on November 3, 1965 (p. 3, rec.).

On February 18, 1970, complainant finally testified that upon verification with the Bureau of Immigration, he came to know that respondent was responsible for the issuance of the court clearance to See Tun; and that See Tun is the same person who was convicted in Criminal Case 8749 (Tsn, p. 9, Feb. 18, 1970).

Jaime P. Lagardo, Assistant Chief of the Records Section; Bureau of Immigration, testified that there are two Chinese with the same name See Tun recorded in the Bureau. One of them bears ACR 206133; and the other, ACR 110240 (Tsn, pp. 8, 10, 13, July 9, 1970).

Jesus Ferrer, Chief of the Alien Certificate Section, also of the same Bureau, stated that he came across a court

clearance issued by respondent dated July 7, 1965, to one See Tun whose address is 1822 Int. 23, Diwata Street, Manila; that this court clearance is required by the Bureau of Immigration before a person included in its "black list" can depart for abroad; that there is one by the name of See Tun who is blacklisted by the Bureau and who bears Alien Certificate of Registration (ACR) No. 206133, whose address is 1822 Int. 23, Diwata Street, Manila and who applied for an Emigration Registration Certificate so that he could leave for abroad; and that said See Tun was required to submit a court clearance (Tsn, pp. 6, 12, 14, August 5, 1970).

When it was respondent's turn to present his evidence, the hearing was again indefinitely postponed due to the failure of then Provincial Fiscal Benjamin Aquino to resolve the criminal aspect of the case.

On May 12, 1972, Clerk of Court Nicanor G. Salaysay, who took over the investigation, sent respondent a letter with the information that inasmuch as it was already more than a year and neither the complainant nor the respondent had made any move for the continuation of the investigation, he was constrained to set the case for hearing on May 23, 1972 (p. 233, rec.).

On September 5, 1972, Fiscal Aquino, already a District Judge of the Court of First Instance, Pasig, Rizal, forwarded the entire records of I.S. No. 13592, "Murillo Omadto vs. Francisco Evangelista, et al." to the Office of the Provincial Fiscal, together with his own resolution of the same, the dispositive portion of which is hereby quoted:

"In view of the fact that there is no sufficient evidence and prima facie case against respondents, and it appearing further that not less than the Director, National Bureau of Investigation, Manila, in its investigation conducted separately (Report dated July 20, 1967, [sic] that instant case be considered closed, it is hereby recommended that the charge against respondents be dropped" (p. 252, rec.).

The resolution of Fiscal Aquino was then made the basis of the Report and Recommendation of the Clerk of Court Nicanor Salaysay, the dispositive part of which reads:

"In view of the above findings and decision of the Office of the Provincial Fiscal recommending the dropping of the charge against respondents which include Francisco G. Evangelista, and considering that it was complainant himself, Murillo Omadto, who submitted the suggestion of then Chief State Prosecutor Emilio A. Gancayco to make representation with this Office for the deferment of the hearing of the instant case until after the termination of the investigation conducted by the Fiscal's Office, undersigned concurs with the recommendation of the Office of the Provincial Fiscal that the charge against Francisco G. Evangelista be dropped" (p. 285, rec.).

On October 24, 1974, the NBI Director, upon request of the Judicial Consultant, forwarded to this Court the Report dated July 20, 1967 and other pertinent documents of its investigation of respondent.

A cursory reading of said report belies any factual or legal basis for the recommendation of Provincial Fiscal Benjamin Aquino and Investigator Nicanor Salaysay. Contrary to the findings of both Fiscal Aquino and Clerk of Court Salaysay, NBI Agent Florencio Viray, who conducted the inquiry, concluded that "respondent was fully aware that a criminal case for murder was filed against a person by the name of SEE TUN when he signed and issued a certification on July 7, 1965 in favor of the latter . . . for the purpose of going abroad" (pp. 15-16, NBI Case No. 27167).

The NBI Report is properly supported by testimonial and documentary evidence including the sworn statement of respondent. The findings, therefore, are unassailable that respondent issued the court clearance in question without adhering strictly to the standard operating procedure laid down by his office in the issuance of certificate of court clearances.

As will be seen from the verified affidavit of Luis Ruiz (p. 55, NBI Report), a commission agent of V. Y. Ching Travel Service, the practice being followed in the issuance of court clearances by the Office of the Clerk of Court, CFI, Pasig, Rizal, is to require the applicant to produce a clearance from the municipal court of the applicant, his ACR, ICR, and Residence Certificate Class A; that if the applicant bears a name similar to one who has a derogatory record in the docket, he is required to submit an affidavit subscribed and sworn to before any of the fiscals that he is not the same person accused in the case on record and that he has no other case filed, pending or decided in any court in the Philippines; that aside from these requirements, he is also required to produce a clearance from the Provincial Fiscal's Office; that the issuing officer requires the production of the person of the applicant for further verification; and that the corresponding ACR number, the date and place of issue are always noted or stated on the face of the clearance thus issued.

Respondent admitted that he is familiar with See Tun because he had seen him many times during the trial of Criminal Case No. 8749; and that he was the one who prepared the transmittal of the entire records and exhibits presented by the parties in the case. Yet, he did not require See Tun to appear personally before him. Respondent merely asked See Tun's travel agent whom he claims he does not know, to present See Tun's photograph and affidavit stating that See Tun is not the same See Tun alias Antonio Go alias Antonio Reyes, who has a criminal record in the Court of First Instance of Pasig, Rizal. When the requested photograph was presented to him, he, however, could not even determine whether or not it was the "true picture of the one who signed the affidavit of SEE TUN." Thus:

"Q How did you come to the conclusion that this SEE TUN whose picture was given to you was the one who executed the affidavit presented to you by the travel agent?

"A At the time the picture was presented to me by the travel agent, I could not be in a position to conclude that it is the true picture who signed the affidavit of SEE TUN. x x x " (p. 42, NBI Report).

If there is truth to the claim of respondent that he does not know the travel agency or its agent who followed up See Tun's court clearance; and that from the supposed picture of See Tun that was presented to him, he was not in a position to conclude that it is the "true picture" of See Tun, the normal course of action for respondent to take would be to compel See Tun to appear personally before him to enable him to make a careful identification of the applicant, to verify whether or not he is the See Tun whom he had seen and who on his own personal knowledge was convicted before the Court of First Instance of Pasig, Rizal. Respondent failed to observe and exercise all precautionary measures. Although, it is worthy to note that in the case of the other See Tun, respondent strictly adhered to the rules regulating the issuance of court clearances. In its report, the NBI found that respondent, only a week earlier, required another applicant for court clearance, also a Chinese by the name of See Tun, holder of ACR No. 50587, to appear before respondent and to submit his picture and affidavit stating that he is not the same See Tun convicted by the CFI of Pasig, Rizal, in Criminal Case No. 8749. In the case of See Tun, holder of ACR No. 206133 and convicted murderer, We can only conclude that nothing but MALICE could have influenced respondent in dispensing with the requirements and with the personal appearance of said See Tun.

The respondent in his defense contends that the data appearing below his signature, namely, "A-206133, issued at Cebu City on January 13, 1951," was not in the certification when he signed the same; and that in issuing this kind of clearance, "sometimes he placed the ACR No., date and place of issue and sometimes he omitted it, when he is personally convinced that the applicant has no criminal record."

Aside from respondent's admission that the alleged addition were typed on his very own typewriter, the patent

similarity in size and type of the letters of all the statements appearing in the clearance certificate amply demonstrates that said certificate of clearance including the alleged additions were typed on the typewriter of respondent.

Indeed, the denial of respondent cannot prevail over the positive declarations of Silvestre Madolara y Cesar of the Oversea Travel Service and Luis Ruiz y Yupaco of the V.Y. Ching Travel Service, in their separate sworn statements that in all certificates of clearance which they secured from the office of the Clerk of Court, CFI, Pasig, Rizal, the court clearances always contain the number, date and place of issue of the ACR.

The evidence on record which led to the issuance of the court clearance by respondent in favor of See Tun alias Antonio Go, alias Antonio Reyes, the actual holder of ACR No. A-206133, issued at Cebu City on January 13, 1951, and actually residing at 1822 Int. 23, Diwata Street, Manila, and who was found guilty of murder in Criminal Case No. 8749, CFI, Pasig, Rizal, amply establish the respondent's culpability.

Under Article XIII, paragraph 6, Civil Service Rules and Regulations, as amended by Presidential Decree No. 6, "Dishonesty" is one of the Civil Service offense which warrants the institution of an administrative action against a government official or employee. Without doubt, the act committed by respondent is dishonesty. By wilfully and maliciously ignoring the rules for the issuance of court clearances, respondent facilitated the departure of a convicted criminal for another country and in the process aided the latter in evading the service of his sentence in violation of Article 187 of the Revised Penal Code. Respondent's act also constitutes a violation of Article 171 (4) of the Revised Penal Code, for Falsification of Public Document, by "making untruthful statements in a narration of facts; x x x ."

It is to be noted that this is the third administrative case filed against respondent involving gross negligence and dishonesty in connection with the performance of his official duties. In one such administrative case, respondent was found guilty of irresponsibility and gross negligence by no less than the Commissioner of Civil Service, and was suspended for six months without pay. In the other, respondent escaped administrative and criminal liability as well, by settling the case amicably with the complainant.

The commission of the foregoing administrative irregularities indicates respondent's habituality, which, under Memorandum Circular No. 8 of the Civil Service Commission, constitutes an aggravating circumstance.

The Constitution expressly sanctifies the principle that a public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency (Art. XIII, Sec. 1).

As so pronounced in *Valencia vs. Pamisaran* (56 SCRA 235), such dishonesty and untrustworthiness cannot be tolerated in the public service. Respondent's habituality seriously impaired the public image in the administration of justice and has shown his unfitness to continue in office. His act constitutes a serious misconduct to warrant his removal from the public service (*CIR vs. Gruspe, Jr.*, 57 SCRA 380).

It should likewise be noted, that former Provincial Fiscal and later CFI Judge Benjamin Aquino, who recommended that the criminal complaint against respondent be dropped on the ground that no less than the Director, National Bureau of Investigation, Manila, in separate investigation concluded that the case be closed, is already out of the government service. His resignation has been accepted by the President of the Philippines in 1972.

ACCORDINGLY, RESPONDENT FRANCISCO G. EVANGELISTA, SPECIAL DEPUTY CLERK OF COURT, CFI, PASIG, RIZAL, IS HEREBY ORDERED DISMISSED FROM THE SERVICE WITH PREJUDICE TO REINSTATEMENT IN ANY GOVERNMENT OFFICE, AGENCY OR

INSTRUMENTALITY INCLUDING GOVERNMENT-OWNED OR CONTROLLED ENTERPRISES - WHETHER PERTAINING TO THE NATIONAL OR LOCAL GOVERNMENT - AND FORFEITURE OF ALL HIS RETIREMENT BENEFITS AND PRIVILEGES.

Makalintal, C.J., Fernando, Teehankee, Barredo, Antonio, Esguerra, Muñoz Palma, Aquino, Concepcion Jr., and Martin, JJ., concur.

Castro, J., took no part.

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