

LUIS D. SANTOS, PETITIONER, VS. ATTY. NILO S. TUAZON, RESPONDENT.

A.C. No. 1551. July 21, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This disbarment case stemmed from an estafa case filed by Atty. Nilo S. Tuazon against Luis D. Santos who had issued bouncing checks.

On March 25, 1970 Santos purchased for P240,000 the shares of stock of Tuazon in the Diamond Shipping Corporation. Santos made an initial payment of P40,000. The balance of P200,000 was covered by a promissory note and five postdated checks issued by Santos. Four checks were dishonored. Santos failed to pay the balance of the price amounting to P100,000. He transferred the stocks to Ruperto Tankch.

On August 15, 1974 Tuazon sued Santos and Tankeh the Court of First Instance of Quezon City for the recovery of the said balance (Civil Case No. Q-19174).

Not content with that civil action, Tuazon, through counsel, filed on January 22, 1975 a complaint for estafa against Santos in the office of the provincial fiscal of Rizal. On May 15, 1975 the fiscal charged Santos with estafa in the Court of First Instance of Rizal (Criminal Case No. 14355). On being served with a warrant of arrest, Santos put up a cash bond of P15,000.

The criminal case was reinvestigated by a state prosecutor. Upon his motion to dismiss, concurred in by the fiscal, the court dismissed the case in its order of August 25, 1975.

Santos, smarting from the criminal action filed against him by Tuazon, retaliated by filing in this Court on October 28, 1975 a complaint for disbarment against Tuazon who was admitted to the bar in 1932. Santos alleged that Tuazon committed a serious breach of professional ethics by instigating a false or malicious suit.

Respondent Tuazon denied the charge. He said that he would have been remiss in his duties as a lawyer if he had closed his eyes to the commission of a fraud or crime perpetrated against himself.

The case was referred to the Solicitor General for investigation, report and recommendation. After complainant Santos had presented his evidence and when respondent Tuazon was under cross-examination, Santos manifested in a letter to the Solicitor General dated April 27, 1976 that he had decided to adopt a "forgive and forget" attitude, that he was "no longer interested" in prosecuting the case, and that he would not object to its dismissal (Exh. 18).

Tuazon objected to the dismissal. He insisted that the hearing be continued. He completed the presentation of the evidence in his defense.

In the meantime, the Court of First Instance of Quezon City rendered a verdict in Tuazon's favor. In its decision dated February 24, 1976 it ordered Santos to pay the sum of P100,000 plus P20,000 as damages and attorney's

fees.

(A lawyer may be disbarred "for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do" (Sec. 27, Rule 138, Rules of Court).)

(The issue is whether Atty. Tuazon's act of filing through a lawyer a charge of swindling against his debtor, Santos, which charge was filed in court by the fiscal but was later dismissed, constituted malicious prosecution which justifies Tuazon's disbarment.

We hold that that act is not within the purview of the grounds for disbarment. It is true that the rule of *inclusio unius est exclusio alterius* does not apply to the grounds for disbarment enumerated in section 27 (*Royong vs. Oblena*, 117 Phil. 865. But Tuazon's conduct cannot be categorized as a reprehensible act which warrants the cancellation of his name in the Roll of Attorneys or which shows his unfitness to be a member of the bar.

[It is evident that he acted in good faith in instituting the criminal action. Civil and criminal actions may be instituted separately in *estafa* cases (Art. 33, Civil Code). Tuazon had warned Santos that he was going to resort to a criminal action to protect his interest.]

Thus, in his letter of June 29, 1970, he apprised Santos that he (Tuazon) would file civil and criminal actions if Santos did not make good the amounts covered by the dishonored checks (Exh. 10). Tuazon waited for more than four years before he filed the criminal action.)

(On the other hand, Santos admitted that he filed the complaint for disbarment by way of vindictive retaliation against Tuazon (53 tsn April 20, 1976; 6-9 tsn April 28, 1976).

WHEREFORE, the complaint for disbarment is dismissed.)

SO ORDERED.

Fernando, Barredo, Antonio, and Santos, JJ., concur.

Concepcion, Jr., J., did not take part.

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