

MARCIAL A. EDILLON, COMPLAINANT, VS. JUDGE JESUS P. NARVIOS, JUDGE OF THE CITY COURT OF CEBU CITY, RESPONDENT.

A.C. No. 1753. August 21, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

Police Captain Benjamin Ibones was charged with slight physical injuries in the city court of Cebu City in an information filed by Assistant City Fiscal Abraham Q. Lagarde on October 28, 1975.

Ibones allegedly maltreated or subjected to third degree with his club Roseller Cañete, 16, the son of a school teacher, on suspicion of being a member of a gang of teenagers committing thefts in the public market (Exh. 1; par. 1 of Petition, p. 1, Rollo).

Two days later or on October 30, City Judge Jesus P. Narvios issued an order granting the motion of Ibones (bearing the acting city fiscal's conformity) for the reinvestigation of the case and to hold the warrant of arrest in abeyance. Judge Narvios gave the city fiscal's office thirty days to reinvestigate the case and to submit its findings to the court (Exh. 4).

In view of Ibones' failure to submit his counter-affidavit, the investigating fiscal, with the acting city fiscal's approval, in a resolution dated November 25, 1975 returned the case to the city court (Exh. 5).

That resolution was allegedly not filed in court. Ibones later filed his counter-affidavit. Fiscal Lagarde, with the approval of Acting City Fiscal Oliveros E. Kintanar, in a resolution dated December 10, 1975, recommended the dismissal of the case against Ibones "for lack of sufficient evidence of a prima facie case" (Exh. V-12-A, p. 31, Rollo).

Judge Narvios in his order of December 17, 1975 granted the motion to dismiss filed by Fiscal Lagarde (Exh. 9).

About seventeen months later, or on May 26, 1977, Atty. Marcial A. Edillon filed in this Court a complaint for "disbarment and dishonorable dismissal" against Judge Narvios, Fiscals Kintanar and Lagarde, and Captain Ibones, charging them with flagrant violations of the Anti-Graft and Corrupt Practices Law in connection with the dismissal of the case against Ibones.

Atty. Edillon alleged that the dismissal was "devoid of legal, moral, and ethical responsibility", "knowingly and willfully committed which makes it frighteningly appalling because it ushers the death of justice and eventually of the society".

He further alleged that the supposed corrupt dismissal was "not an isolated case committed by" Judge Narvios but was part of "his modus operandi where the accused is his friend or one he would like to be his friend, or simply for a windfall".

Fiscals Kintanar and Lagarde in their answer observed that complainant Edillon "has been notorious for his propensity to file charges against judges, fiscals and practitioners and for the remarkable ease with which he files

charges at random against whomsoever displeases him". They prayed that the complainant be disbarred.

The case against the two fiscals was referred to the Secretary of Justice. On the other hand, this Court has no disciplinary jurisdiction against Ibones who is not a member of the bar. Apparently, Cañete's mother filed against Ibones a complaint with the Police Commission.

Judge Narvios in his answer also countered that complainant Edillon should be the one disbarred because of his inclination to indulge in the ruinous pastime of filing charges against judicial officials who might have caused him disappointment in exercising discretion in the performance of their judicial functions.

We find that no disciplinary action can be taken against Judge Narvios for granting the fiscal's motion to dismiss the case.

Generally, a judge allows the dismissal of a case for lack of evidence, upon the fiscal's motion because the prosecution of the case is under the direction and control of the fiscal. As was noted in *U.S. vs. Barredo*, 32 Phil. 444, 451, when a fiscal files a motion to dismiss, "it rests in the sound discretion of the judge whether to accede to such motion or not. Ordinarily, of course, he will dismiss the action in accordance with the suggestion of an experienced fiscal who has personally investigated the facts".

What appears to be irregular in Judge Narvios' management of the case against Ibones was his granting of the latter's motion for the reinvestigation of the case by the fiscal on the inconsistent grounds that he was not allowed to present his evidence and that he intended "to present newly discovered evidence".

Of course, Judge Narvios was simply following a practice, which is not salutary and which is not sanctioned by the Rules of Court, whereby criminal cases already filed in court are held in abeyance and a reinvestigation by the prosecution is allowed.

As a general rule, that practice should be discouraged or should not be tolerated because it generates the impression (at least to lawyers like complainant Edillon who was not born yesterday) that the accused would be able to fix his case or that it would be easier for him to manipulate and maneuver its dismissal in the fiscal's office.

The court should assume that when the fiscal files a case he had thoroughly investigated it. In the case of Ibones, only a light offense was charged. A full-dress preliminary investigation is not required for that light offense.

Judge Narvios should have ordered the arrest of Ibones and allowed him to post the fifty-peso bail, arraigned him and then tried that simple case.

In that way, he would not have exposed himself to the suspicion that he was partial to the accused.

WHEREFORE, the complaint is dismissed but the respondent is admonished to strive that his official conduct be free from impropriety and the appearance of impropriety and be above reproach. A copy of this decision should be attached to his personal record.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero,[*] and De Castro,[*] JJ., concur.

[*] Were designated to sit in the Second Division.

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