

UY CHUNG SENG AND CHING UY SENG, COMPLAINANTS, VS. ATTY. JOSE C. MAGAT, RESPONDENT.

A.C. No. 2018. December 10, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

On March 27, 1979, Uy Chung Guan Seng and Ching Uy Seng filed a verified Complaint for Disbarment against respondent Atty. Jose C. Magat alleging that the following circumstances warranted his exclusion from the Roll of Attorneys:

"On 22 August 1977 (should be 11 August 1977), C o m p l a i n a n t CHING UY SENG a ROBERT CHING received a letter from Respondent Atty. JOSE C. MAGAT, threatening to report him to the government authorities if he would not get in touch with him (MAGAT) and his clients with respect to a bunch of documents and papers pertaining to Complainants' business. Such documents turned out to be a part of the articles which were stolen from the office/resi-dence of Complainants on 2 June 1977. In the morning of 13 August 1977, UY CHUNG GUAN SENG a HENTRY CHING; his lawyer, Atty. ELISEO LEGASPI; and NBI Agent RODOLFO DAHIROC went to the office of Atty. MAGAT at Room 512 Madrigal Bldg., Escolta, Manila, in response to the above-mentioned letter. Atty. MAGAT initially de-manded the sum of P500,000.00 in exchange for the robbed documents. CHING, LEGASPI and Agent DAHIROC insisted on seeing the documents first and to talk with Atty. MAGAT's clients before they negotiate the terms of the return of the documents. The meeting was reset on 15 August 1977 at 3:00 p.m., during which Atty. MAGAT informed them that their demand was reduced to P300,000.00 on a 'take it or leave it' basis. Atty. MAGAT's 'clients' who brought in the robbed documents turned out to be the suspects in the robbery of the office/residence of Complainants on 2 June 1977. Atty. MAGAT insisted that HENRY CHING produce P30,000.00 to show his good faith in pushing through with the negotiation. It was at this juncture that the NBI Agents confronted the group and brought them to the NBI office together with the robbed documents for investigation." [1]

Required to comment, respondent alleged that there was absolutely no truth to the charge imputed to him; that the incident became the subject of a criminal charge for Light Threats filed by the NBI Agents with the Office of the Fiscal of Manila (IS No. 77-26882), which, after preliminary investigation, was dropped for "utter insufficiency of evidence"; and that after the lapse of more than one year from the date of said criminal complaint, complainants through Atty. Eliseo Legaspi, reopened the case before this Tribunal merely to harass him and assail his character and conduct. Respondent prayed that the complaint be dismissed for utter lack of merit.

On June 5, 1979, upon consideration of the Com-plaint and the Comment, this Court resolved to suspend respondent from the practice of law effective imme-diately upon notice, and until further orders. The Court further resolved to refer the case to the Solicitor General for investigation.

On September 24, 1979, the Solicitor General[2] submitted his Report and Recommendation, quoted in full hereunder:

"REPORT AND RECOMMENDATION

COME NOW the undersigned counsel and after investigation of the complaint in the above-entitled case pursuant to the Resolution dated June 5, 1979, no-tice of which was received by the Office of the Solicitor General on June 11,1979, respectfully submit this Report and Recommendation.

1. This case stemmed from a letter dated August 11, 1977 sent by respond-ent Atty. Jose C. Magat to Mr. Robert Ching, one of the complainants herein, which reads as follows:

J.C. Magat Law Office

R-512 Madrigal Building

Escolta, Manila

Tel. No. 48-23-01

PERSONAL DELIVERY

August 11, 1977

Mr. Robert Ching

528 San Fernando, or 107 Renta St.

Binondo, Manila

Dear Mr. Ching:

Mr. Felicisimo Cruz and his companions came to this office with bunch of documents and papers and statements of accounts pertaining to the business transactions of the A-1 Photo Litho and Photo Engraving. Their intention was for me to first get in touch with you about the disposition of the same or go direct to the government office to examine the said documents with original invoices and triplicates thereof showing discrepancies in amounts.

I do not know whether you will be interested. If you are interested, you may get in touch with me in my office possibly in the after-noon of any day except Sunday and Saturday, altho I am here on Saturdays up to 1:00 p.m.

If I do not hear from you upon receipt of this letter either today or tomorrow, I will consider your silence as indifference and that I can proceed to do what I believe is proper.

Very truly yours,

(SGD.) JOSE C. MAGAT

JCM/

P.S. Enclosed is a sample of trans-actions of your company indicating the actual amount paid on the original invoice and the amount shown on the triplicate thereof and likewise the amount not reported in your statement of account.

(In.) JCM

(Exh. 'C', p. 27, Records).

The letter was personally deli-vered by respondent's secretary to complainant Uy Chung Guan Seng, bro-ther of complainant Robert Ching (pp. 243, 246, t.s.n., July 23, 1979). Enclosed with the letter was a colum-nar

sheet containing a list of invoices indicating the amount actually paid, as shown in the original invoice, and the amount reflected in the triplicate thereof (Exh. C-1, p. 28, Record; p. 246, t.s.n., id.).

2. On August 11, 1977, the letter was referred to Atty. Eliseo P. Legaspi. In the afternoon of that same day, Atty. Legaspi and Uy Chung Guan Seng went to the office of respondent Magat at Rm. 512 Madrigal Bldg., Escolta, Manila, but Atty. Magat was not there. However, they met Atty. Magat on the Escolta sidewalk in front of the Lyric Theater. Atty. Legaspi and Atty. Magat conferred about the letter and the latter told the former that he will communicate with his client. Atty. Magat also told Atty. Legaspi to come back on August 13 (pp. 94-98, t.s.n., July 9, 1979).

3. In view of the development, Atty. Legaspi wrote on August 12, 1977 a letter to the Director of the National Bureau of Investigation (NBI for short) seeking assistance 'by way of assigning one of your Agents in my planned conference with Atty. Magat tomorrow' (Exh. D, p. 29, Records; pp. 28-29, id.). Conformably with the request, the NBI assigned Agent Rodolfo Dahiroc to assist Atty. Legaspi (p. 32, t.s.n., id.).

4. On August 13, 1977, Atty. Legaspi, Agent Dahiroc, and complainant Uy Chung Guan Seng, also known as Henry Ching, went to the office of Atty. Magat at Rm. 512 Madrigal Building to negotiate about the contents of the letter Exhibit 'C', but the group of Felicisimo Cruz mentioned in the letter did not arrive. Atty. Magat asked Atty. Legaspi who Agent Dahiroc was, he being then dressed in T-shirt. Atty. Legaspi introduced Agent Dahiroc as his assistant (p. 102, t.s.n., July 9, 1979). Atty. Magat told Atty. Legaspi to return on August 15 (p. 35, t.s.n., July 6, 1979).

5. On August 15, 1977, Atty. Legaspi accompanied by Agent Dahiroc and Henry Ching, again went to the office of Atty. Magat. Upon reaching the place, Atty. Magat told the trio that the group of Felicisimo Cruz will arrive at 5:00 o'clock that afternoon. While waiting for the group of Felicisimo Cruz to arrive, conversation ensued, during which Atty. Magat demanded P500,000.00 for the return of the documents mentioned in the letter. This amount was reduced to P300,000.00, with the request, however, that an advance payment of P30,000.00 be made to show good faith; upon paying the balance, all the documents will be returned (pp. 35-37, id.; pp. 260-261, t.s.n., July 23, 1979). Shortly thereafter Felicisimo Cruz and his group arrived, bringing along with them two sacks of invoices and papers and the black portfolio of Uy Chung Guan Seng. Atty. Magat showed Uy Chung Guan Seng the folder or plastic bag containing papers and the portfolio to verify whether those were really their papers (pp. 37-38, t.s.n., July 6, 1979). It turned out that the person introduced as Felicisimo Cruz is Rodolfo Salita, the driver of complainant Robert Ching, who absconded with P40,000.00 owned by Robert Ching on December 3, 1976 (p. 39, id.), and who had sent a letter to Uy Chung Guan Seng on July 1, 1977 (Exhs. L and L-1) admitting participation in the robbery committed at the latter's office on June 2, 1977 in which papers and documents pertaining to their business, among other things, were taken. Rodolfo Salita's companions were Jesus Salita and his brother-in-law Robert Rajotte (pp. 39-40, id.).

6. When the group of Rodolfo Salita, alias Felicisimo Cruz, arrived with the documents subject of the negotiation, and after verification of sample documents, Atty. Legaspi communicated secretly with Agent Dahiroc to get reinforcements and then in a loud voice ordered Dahiroc and Uy Chung Guan Seng to get the P30,000.00 being demanded by Atty. Magat as earnest-money (p. 40, id.; p. 135, t.s.n., July 9, 1979). Whereupon Uy Chung Guan Seng and Agent Dahiroc left Atty. Magat's office and went down-stairs. Uy Chung Guan Seng proceeded to the Insular Bank of America in Dasmariñas, pretending to get the money there, while Agent Dahiroc went to get reinforcements (p. 40, t.s.n., July 6, 1979; pp. 262-264, t.s.n., July 23, 1979). After a few minutes, Agent Dahiroc and the reinforcements arrived and they placed Rodolfo Salita, Jesus Salita, Robert Rajotte and a certain Rogelio Villagrancia under arrest; they also seized the articles and documents brought by Rodolfo Salita and his group (p. 41-42, t.s.n., July 6, 1979; p. 357, t.s.n., July 25, 1979; pp. 383-384, t.s.n., July 27, 1979). Agent Dahiroc, after introducing himself as an NBI agent, apprised Atty. Magat that the documents seized were the subject of a robbery case and that from the tenor of the letter, Exhibit 'C', there was a case of extortion against respondent (pp. 358-359, t.s.n., July 25, 1979). Agent Dahiroc then invited Atty. Magat to go to the NBI for investigation (p. 359-361, id.). Atty. Magat pleaded that as a

brother in the profession, he wanted to talk with him 'on a personal level', so he in-vided Agent Dahirot to go with him to the Kentucky Cocktail Lounge which was near his office. Agent Dahirot acceded because the other persons arrested were already in the custody of the other NBI agents. At the Kentucky Cock-tail Lounge, Atty. Magat told Agent Dahirot that if the latter wanted to, they can make some money. Agent Dahirot answered that there was no money in the documents because they had been brought to the attention of the government and that there was a complaint for robbery. Agent Dahirot further told Atty. Magat that there was no way for them 'to have a happy agreement', so the former brought the latter back to the office (pp. 362--363, t.s.n., July 25, 1979; pp. 386-387, t.s.n., July 27, 1979). At the office, Atty. Magat insisted on his right not to go to the NBI, so Agent Dahirot call-ed up the NBI Regional Director and informed him of the unwillingness of Atty. Magat to go with the group to the NBI. As a compromise, Atty. Magat was allowed to remain after he had pre-pared and signed a written undertaking that he would report to the NBI office the following day for questioning re-garding the matter (Exh. Q, p. 37, Records; pp. 364-366, t.s.n., July 25, 1979). Contrary to his written promise, Atty. Magat did not report to the NBI Office (p. 367, id.).

Agent Dahirot prepared an in-ventory of all the articles and documents seized during the raid at the office of Atty. Magat (Exh. S); NBI photographers took pictures of the office of respond-ent where the raid took place, as well as of the persons arrested and the ar-ticles seized (Exhs. F, G, H, I, J, and K; pp. 57, 58, 59, 61, 62, 73, Records). On August 19, 1977, Agents Rodolfo Da-hiroc and Leopoldo Cotaco submitted their written report on the incident in question (Exh. R, pp. 7-14, Records; pp. 367-371, id.).

7. In the course of their conversation during one of his meetings with Agent Dahirot and Atty. Legaspi, respondent Magat told the duo that as counsel for Felicisimo and his group in the transaction, his share would be one-third (1/3) of the amount which they would receive from the com-plainants (pp. 402-404, t.s.n., July 27, 1979).

8. Respondent Atty. Magat admits that he wrote and sent the letter, Exhibit 'C', to complainant Robert Ching but he claims that he prepared the same at the request of Felicisimo Cruz after being shown sales invoices of A-1 Photo Litho, a firm managed by Robert Ching, and after noticing discrepancies in the amounts appearing in the originals and in the duplicates of said in-voices (pp. 7-8, t.s.n., July 30, 1979). He also admits that on August 13, 1977, he showed Atty. Legaspi the sample of the sales invoice of the A-1 Photo Litho containing the anomalous discrepancies aforementioned (p. 13, id.). He, however, denies that he demanded the amounts mentioned by the witnesses for the complainants because what he did was merely to con-vey the demands of his clients (pp. 18-23, id.).

9. The actuations of respondent Atty. Magat constitute malpractice and gross misconduct. Writing and sending the letter Exhibit C and demanding from the complainants the amount of P500,000.00, later on reduced to P300,000.00, with P30,000.00 as down-payment to show good faith, in consi-deration for the return of anomalous invoices and documents, is highly reprehensible. Such acts constitute not only threat but extortion. Respond-ent's protestations of good faith in sending the letter to the complainants are not convincing. If indeed he had no ulterior motive, he should have referred the documents brought by Salita and his companions directly to the BIR instead of addressing a letter with a veiled threat to the complainants and having the letter delivered per-sonally to them.

Even assuming as true the allegation of respondent that he did not actually demand the amounts mentioned above for himself but that he merely conveyed the demands made by the group of Felicisimo Cruz, such act is still violative of an attorney's oath. For then, respondent assisted his clients in a scheme which he knows to be dishonest. He knew that the docu-ments presented by Felicisimo Cruz to him are proof that the government has been unlawfully deprived of much need-ed taxes. As testified to by him, re-spondent, after verifying the invoices, was convinced that the A-1 Litho and and Photo Engraving was cheating the government (pp. 83-84, id.). He knew too that the desire of Cruz and his group to extort money from the complainants in exchange for the anomalous documents was illegal. Despite such knowledge and awareness, he connived with his clients in violating the law. And for what? It is in consideration of the one-third share he would receive from the

proceeds of the transaction. The assistance he extended to his clients' dishonest scheme and his connivance with them in violating the law render the respondent guilty of unprofessional conduct which warrants his disbarment or suspension.

The promoting of organizations, with knowledge of their objects, for the purpose of violating or evading the laws against crime constitutes such misconduct on the part of an attorney, an officer of the court, as amounts to malpractice or gross misconduct in his office, and for which he may be removed or suspended (Code of Civil Procedure, sec. 21). The assisting of a client in a scheme which the attorney knows to be dishonest, or the conniving at a violation of law, are acts which justify disbarment. (In Re Terrel, 2 Phil. 266, 267-268; Underlining supplied).

10. The grounds for disbarment or suspension enumerated in the statute should not be taken as a limitation of the general power of the courts to disbar or suspend a lawyer. For the power of the court over its officers cannot be restricted. A lawyer may be removed not only for malpractice or dishonesty in his profession but also for his gross misconduct which shows him to be unfit for the office and unworthy of the privileges which the law confers upon him (In Re Puno, 19 SCRA 439).

It has been repeatedly ruled that the purpose of disbarment is to protect the courts and the public from the misconduct of officers of the court and to ensure the administration of justice by requiring that those who exercise this important function shall be competent, honorable and trustworthy men in whom courts and clients may repose confidence (Santos vs. Dichosa, 84 SCRA 622). In the case at bar, respondent has not exercised honesty and trustworthiness and has failed to live up to the high standards of the law profession. It is the duty of a member of the bar to avoid all appearances of impropriety and his actions should be beyond suspicion.

It is true that an attorney enjoys the legal presumption of innocence until the contrary is proved, but this presumption has been rebutted by the clear and convincing evidence presented by the complainants and their witnesses.

The actions of respondent constitute attempted extortion although what was filed against him in the Office of the City Fiscal of Manila was only for light threats. Of course, respondent was able to show that the charge for light threats lodged against him was dismissed, as shown by the memorandum of Assistant Fiscal Billy M. Apalit and the memorandum of 2nd Assistant City Fiscal Artemio M. Cusi recommending the dismissal of the charge of light threats filed against him (Exh. 2, 2-A, 2-B & 3, pp. 81-84, Rec.). But the dismissal of the criminal complaint against respondent does not preclude his disbarment. Even granting that the acts committed by him may not be sufficient to make him criminally liable, the same nevertheless constitute gross misconduct and/or malpractice, which are grounds for disbarment. Moreover, the purpose of disbarment, as stated above, is not to punish the offender but to protect the courts and the public from his pernicious activities.

It is not amiss to mention at this juncture that respondent is facing two other administrative cases before this Honorable Court, filed by his own cousins, one involving an affidavit notarized by him and the other an answer to a complaint prepared and filed by him in a certain case (t.s.n., pp. 77-78, July 30, 1979).

RECOMMENDATION

WHEREFORE, in view of the foregoing considerations, it is respectfully recommended that the respondent Atty. Jose C. Magat be disbarred.

In line with this recommendation, the undersigned counsel are filing together with this Report and Recommendation the corresponding complaint.

Manila, September 19, 1979."[3]

The Complaint filed by the Solicitor General also prays that respondent be disbarred, that his name be stricken off the roll of attorneys; and that his certificate of admission to the bar be recalled.

In his Answer to the Complaint, respondent rei-terated the contentions in his Comment and added that his "sole defense" is anchored on the letter he wrote to the Bureau of Internal Revenue (BIR) on August 12, 1977, attached to his Answer as Annex "2-A", which reads:

"J. C. MAGAT LAW OFFICE

R-512 Madrigal Building

Escolta, Manila

Tel. No. 48-23-01

CONFIDENTIAL August 12, 1977

The Honorable Commissioner

Bureau of Internal Revenue

Quezon City

S i r :

On August 10, 1977, a certain Mr. Felicisimo Cruz came to my office and brought to my attention several books of accounts and invoices reflecting anomalies committed by the owner thereof, the A-1 Litho Photo and Litho Engraving company with offices at 528 San Fernando, Binondo, Manila.

I have no control of the documents, however, because they are always with the said Mr. Cruz and he told me that he stole all those documents from the company because he was allegedly dismissed illegally.

I have written the head of the company to have a meeting with the said Mr. Cruz in my office if he wants to see those documents again. In the meantime, knowing that the meeting will not immediately take place, I have written to your office with a view to examining the documents if they are again brought into my office by Mr. Cruz.

I am not sure you will be interested but if your office would be, you may send one of your men in my office until the meeting goes through.

Very truly yours,

(SGD.) JOSE C. MAGAT"[4]

Likewise attached to respondent's Answer to the Complaint as Annex "2" is the reply of the BIR Atty. Magat's request that said office furnish him with a copy of his original letter. The reply reads:

"October 25, 1979

Atty. Jose C. Magat

R-512 Madrigal Building

Escolta, Manila

S i r :

Upon your request, as per your letter to this Office dated October 19, 1979, which was received by the Office of the Commissioner on October 22, 1979, enclosed is a xerox copy of your original letter to the Commissioner

of Internal Revenue, dated August 12, 1977. The original letter is on file with the docket of the tax investigation report on A-1 Litho Photo and Litho Engraving Co. submitted by Special Agents of the Tax Fraud Division.

The said letter was received by the Records Division, BIR, Quezon City on September 6, 1977, and this was transmitted to the Tax Fraud Division, BIR, on September 7, 1977. The Post mark of the Manila Central Post Office on the envelope which contained said letter, bears the date August 16, 1977 p.m.

Very truly yours,

EFREN I. PLANA

Acting Commissioner of Internal

Revenue

By:

REYNALDO A. SUAREZ

Chief, Tax Fraud Division

TAN 1549-655-7"[5]

On October 21, 1982, the case was set for hearing during which respondent appeared on his own behalf. Thereafter the Court resolved to consider the case sub-mitted for resolution.

Upon the oral and documentary evidence, we find the charges substantiated and the Report and Recommendation of the Solicitor General thorough and well founded.

Although respondent's confidential letter to the BIR is dated August 12, 1977, or ostensibly a day after respondent's letter to Robert Ching, and prior to the raid on respondent's office on August 15, 1977, the BIR letter of October 25, 1979, supra, specifically stated "the Post mark of the Manila Central Post Office of the envelope which contained said letter, bears the date August 16, 1977 p.m.". Evidently, respondent's letter was mailed the day after the raid on August 15, 1977 as an afterthought designed to stave off impending liability. His defense at the hearing that the Post Office was delayed in stamping the letter is puerile. The presumption of regularity in the performance of official functions (Rule 131, Sec. 5 [m]) has not been overcome. Besides, if respondent were really motivated by the desire to expose tax anomalies, he could have written the BIR directly. There was no need to have written his letter (Exhibit "C") to Robert Ching.

The dismissal of the criminal complaint for Light Threats against respondent by the City Fiscal's Office (Exhibits "2", "2-A", "2-B" and "3", pp. 81-84, Record) will not preclude the fact that respondent has not exhibited honesty nor shown trustworthiness in the discharge of his duties as a member of the Bar. The dismissal of the criminal complaint does not exonerate him of professional misconduct.

The proper disciplinary action against respondent is disbarment for malpractice and gross misconduct. He has shown himself unfit for the office and unworthy of the privileges which the law confers upon him.[6]

"The assisting of a client in a scheme which the attorney knows to be dishonest, or the conniving at a violation of law, are acts which justify disbarment. (In Re Terrel, 2 Phil. 266, 267-268)."

WHEREFORE, respondent Atty. Jose C. Magat is hereby disbarred; his name is ordered stricken off the Roll of Attorneys; and his Certificate of Admission to the Bar is hereby recalled.

SO ORDERED.

Teehankee, (Acting C.J.), Makasiar, Guerrero, Abad Santos, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., and Concepcion, Jr., JJ., on leave.

Aquino and Plana, JJ., no part.

De Castro, J., reserves his vote.

[1] pp. 4-5, Rollo.

[2] He was assisted by Asst. Solicitor General Lorenzo G. Timbol and Solicitor Jesus O. Ibay.

[3] pp. 90-100, Rollo.

[4] p. 113, *ibid.*

[5] p. 112, *ibid.*

[6] *In Re Puno*, 19 SCRA 439 (1967); *In re Pelaez*, 44 Phil. 568 (1923).

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