

FELIX BARJA, COMPLAINANT, VS. JUDGE BONIFACIO B. BERCACIO AS MUNICIPAL JUDGE OF TABACO, ALBAY, RESPONDENT.

A.C. No. 561-MJ. December 29, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court finds respondent judge guilty of dishonesty and misappropriation to his own use of fiduciary funds (proceeds of cash bail bond), compounded by subsequent manifestly false claims and statements that were properly described "as unbelievable as they are illogical" and orders his immediate separation from the service with all the penalties appurtenant thereto.

On October 4, 1973, complainant filed the present administrative case charging respondent Bonifacio B. Bercacio, judge of the municipal court of Tabaco, Albay with (a) dishonesty, (b) malicious delay in the disposal of cases and (c) conduct unbecoming of a judge and partiality.

Executive Judge Arsenio G. Solidum conducted a long-drawn investigation and submitted under date of June 29, 1976 his report finding respondent definitely guilty of the first count of dishonesty, and giving him "some benefit of doubt" as regards the second and third counts.

The charge of dishonesty is based on respondent judge's having deposited in his personal account with the Metropolitan Bank branch at Tabaco a check for P8,000.00 posted on June 21, 1973 as cash bail bond by Nestor Locsin, who was accused in Criminal Case No. 4577 pending in respondent's court, obviously converting the trust fund to his own use. Notwithstanding that said accused upon motion granted by respondent substituted the said cash bond with a surety bond on June 26, 1973, respondent could not then and there return to him the cash (which should have remained intact) and returned to him the sum of only P5,000.00 almost a month later on July 20, 1973 and up to this very date, has failed to return the balance of P3,000.00.

The investigating judge submitted the following findings and observations in his report:

"In Criminal Case No. 4577 of the Municipal Court of Tabaco, Albay the accused therein Nestor Locsin in order to gain his release from confinement filed a bond in the form of a Pacific Banking Corporation check in the amount of P8,000.00 issued by the Legazpi Oil Co., Inc. in favor of the Municipal Court of Tabaco, Albay [Exhibit 'B']. The respondent Judge required said check to be substituted with a Manager's check. Accordingly on the next day, June 22, 1973, a Manager's check issued by the same bank was issued in favor of the same Municipal Court of Tabaco, Albay for the same amount [Exhibit 'C']. This Manager's check was later on deposited by the respondent in his personal account with the Metropolitan Bank and Trust Co., Tabaco Branch.

"On June 26, 1973 Nestor Locsin thru counsel requested the Municipal Court presided over by the respondent Judge that the Manager's check so put up as cash bond be substituted with a surety bond [Exhibit 'D'] but despite the showing that the said motion to substitute his cash bond with a surety bond was granted, of the P8,000.00 cash, only the amount of P5,000.00 in the form of a Cashier's check issued by the Metropolitan Bank and Trust Co. was handed over to Nestor Locsin [Exhibit 'E1'] thereby leaving an unaccounted balance of

P3,000.00. As of the filing of this administrative case until this date the P3,000.00 remains unpaid."

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"Going back to the matter of the checks, the documentary exhibits presented by the complainant are mute but eloquent proof of the facts charged. These have also been corroborated by the testimonies of Nestor Locsin, Leovigildo Sayson, Assistant Cashier of the Pacific Bank, Legazpi Branch, and Guilberto Molano, Accountant at the Metropolitan Bank and Trust Co., Tabaco Branch.

"It is the stand of the respondent that the balance of P3,000.00 was not returned by him to Nestor Locsin because the same had been loaned to him by Atty. Dominador Lim, President of the Legaspi Oil Co., Inc., which issued the first check for P8,000.00. For this purpose he offered in evidence a promissory note dated June 30, 1973 under which he promised to pay Atty. Dominador Lim the amount of P3,000.00 personally loaned to him by said Atty. Lim [Exhibit '5']. To further justify his actuation in requiring the conversion of the ordinary check issued by the Pacific Bank into a Manager's check the respondent submitted in evidence Exhibits '3' and 43-A' purporting to be a query to a Mr. B. Saluna of the Municipal Treasurer's office of Tabaco, Albay whether it is possible to deposit the ordinary check with the Treasurer's office and the advice given by a representative of the Treasurer's office was to change the check with a certified or Manager's check. Likewise, on the witness stand the respondent also testified that when he attempted to finally deposit the check with the Treasurer's office he was made to understand that certain nominal fees had to be paid.

"O-B-S-E-R-V-A-T-I-O-N-S

"Mr. Locsin emphatically declared that the check for P8,000.00 was lent to him by the Legazpi Oil Co. to purchase his temporary liberty. When he was given the Cashier's check for -P-5,000.00 issued by the Metropolitan Bank and trust Co. on July 20, 1973 he was not informed by the respondent that the balance of P3,000.00 was no longer forthcoming nor of the fact that the same was loaned to him by Atty. Lim as President of the Legazpi Oil Company.

"The undersigned investigating Judge cannot give any credit to the self-serving and gratuitous defense of the respondent in that the amount of P-3,000.00 was loaned to him by Atty. Lim as above stated. He should have informed Mr. Locsin about the fact so that the latter would not have bothered expecting the return of the same amount. When afforded the chance by the Honorable Supreme Court to comment on the administrative complaint filed against him, the respondent chose to ignore the dishonesty charge despite its gravity. In his comments to the complaint dated December 8, 1973, the respondent made no reference at all to this charge about the checks. The defense about the P3,000.00 having been loaned to him by Mr. Lim is so unbelievable as it is illogical. On two occasions, the hearings of this case was postponed at the instance of the respondent Judge to enable said Atty. Lim to testify. Manifestations were made to the effect that Atty. Lim was either abroad or too busy to come to Legazpi to testify. It was only when it was determined that Atty. Lim could not come that the promissory note, Exhibit '5', and the receipt allegedly signed by Atty. Lim that the respondent had made a partial payment on the original loan of -P3,000.00 have been presented. As observed earlier, these are self-serving evidence but were nevertheless admitted for whatever they may be worth when this matter reaches the Honorable Supreme Court for final determination and disposition.

"Likewise, it stands highly violative of standard corporate practices for a president of one of the highest earning corporations in the country and the biggest oil producer as well to lend out company money as a personal loan to a friend. It is inconceivable that with his millions Mr. Lim would dip his hands into corporate finances in order to accommodate a friend in need. It would have been very easy for Atty. Lim to give the respondent Judge P3,000.00 in cash or issue him a personal check from his own current bank accounts."

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"In the charge of dishonesty, the undersigned is convinced that the slightest accusation on matters relative to money should be the first to be avoided by those choosing a career in the bench. There is no denying that the

respondent did not at all borrow the P3,000.00 from Atty. Dominador Lim. In addition to the discussions made by the undersigned relative to this very serious charge, the decision of Mr. Lim not to come to court and testify was not so much because he was that busy or that he was abroad but rather because of his well-chosen judgment that even in the defense of a friend, as a respected man in the country and a member of the bar himself, he did not want to perjure himself. It is very obvious therefore that the idea of the loan of P3,000.00 was resorted to by the respondent as a last desperate line of defense which, precisely because it is not true and by the sheer weight of its own lack of any persuasive effect, must simply yield to what is true, logical and reasonable."

Upon receipt of the report, the Court heard respondent in oral argument on December 14, 1976 in order to give him every opportunity to air his side. The hearing as well as our review of the record and the evidence have served to confirm respondent's manifest guilt of the grave charge of dishonesty.

The investigating judge submitted the recommendation that "the respondent be suspended from office for not less than one (1) year, (to) refund the amount of P3,000.00 to Nestor Locsin with legal interests to be counted from June 26, 1973 until fully paid and, after service of his suspension, (that) the respondent be considered resigned and/or retired from the judiciary. In considering him resigned and/or retired, in a final act of compassion, the Honorable Supreme Court is asked that he be declared still entitled to the benefits granted him under existing laws."

The Court is constrained to reject such recommendation of leniency. His grave acts of dishonesty and misappropriation to his own use of fiduciary funds (the cash proceeds of the check) which came into his possession and by law should have been immediately deposited by him with the municipal treasurer as official custodian of such funds, compounded by his subsequent false claims and statements that were "as unbelievable as they are illogical" {to borrow a phrase of the investigating judge) and show a callous disregard of the truth, and his dismal record warrant no less than the imposition of the severest penalty of dismissal from the service and consequent forfeiture of all retirement benefits.

In a previous administrative case against respondent, *Concepcion Dia-Ahonuevo vs. Mun. Judge Bonifacio B. Bercacio*, respondent already showed a weakness in handling funds entrusted to him when he obstinately failed and refused to return to the therein complainant the sum of P3,500.00 which said complainant had deposited with him for the purpose of exercising her right to legal redemption of a certain property and which he returned only after therein complainant had to engage the services of another counsel who secured the corresponding court order requiring respondent to return the sum. The Court found therein as follows:

"Respondent's obstinate refusal or failure to accede to complainant's request for almost a year led the latter to secure the services of another counsel who was compelled — what to him must have been an unpleasant task — to ask from no less than a member of the Judiciary the return of the P3,500.00 deposited with the latter otherwise he would have to take the necessary steps to protect the interest of his client. That demand of Atty. Madrid was made in March of 1973, but instead of delivering the amount, respondent still held it putting up the excuse in a letter to Atty. Madrid (See pp. 4-5 of this Decision) that the money did not belong entirely to Mrs. Anonuevo and that the latter had agreed to his keeping the money during the pendency of the case. That of course was untrue, because, first, there was nothing in the record to show that the P3,500.00 belonged to persons other than Mrs. Aflonuevo from whom respondent received it, and secondly, it was Mrs. Anonuevo who had personally been asking all along for the return of said amount. It is to the discredit of respondent that it took a court order issued on September 13, 1973, for him to return complainant's money to Atty. Madrid."

In the decision of November 27, 1975, the Court found him guilty of illegally engaging in the practice of law despite his disqualification as a municipal judge and of failure to return promptly the amount deposited with him. The Court therein held that "(W)hile the Court does not make a categorical finding that respondent made use of

the money deposited with him, nonetheless, We hold that by his actuations, respondent placed his honesty and integrity under serious doubt,' and meted upon him the penalty of six (6) months' suspension from office with the warning that commission of other acts unbecoming of a Judge will warrant a more severe penalty from the Court."

There is no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. As Justice Munoz Palma stated for the Court in said earlier case against respondent, "(A)lthough every office in the government service is a public trust, no position exacts a greater demand on moral righteousness of an individual than a seat in the Judiciary. A magistrate of the law must comport himself at all times in such manner the his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. To a certain degree, respondent herein failed to meet these exacting standards of judicial conduct."

ACCORDINGLY, respondent Bonifacio B. Bercacio is hereby dismissed as municipal judge of Tabaco. Albay, with forfeiture of all retirement benefits and privileges and with prejudice to reinstatement in any branch of the government service, whether pertaining to the national or local Government, including government-owned and/or controlled instrumentalities and agencies.

In view of the manifest guilt of respondent and the time that this case has been pending, this decision shall be immediately executory upon promulgation.

Castro (C.J.), Fernando, Barredo, Makasiar, Antonio, Munoz Palma and Martin, JJ., concur.

Aquino, J., took no part.

Concepcion, Jr., J., is on leave.

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