

AURELIO M. SIERRA, COMPLAINANT, VS. JHOSEP Y. LOPEZ, CITY PROSECUTOR OF MANILA, EUFROCINO SULLA, 1ST ASSISTANT CITY PROSECUTOR (ACP), ACP ALEXANDER T. YAP, ACP MARLO CAMPANILLA,...

A.C. No. 7549. August 29, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

The instant controversy arose from a complaint for dereliction of duty and gross ignorance of the law by Aurelio M. Sierra against City Prosecutor of Manila Jhosep Y. Lopez, 1[st] Assistant City Prosecutor (ACP) Eufrocino Sulla, Assistant City Prosecutors Alexander Yap, Marlo Campanilla and Armando Velasco.

The facts of the case are as follows:

On July 27, 2006 and August 1, 2006, complainant Aurelio M. Sierra filed several cases before the Office of the City Prosecutor of Manila for Misrepresentation through Deceit and Syndicated Large Scale Fraud in Land Titling with Conspiracy, Land Grabbing, Falsification of Public Document and Economic Sabotage.

These cases were first assigned to ACP Alexander T. Yap. The principal respondents therein, namely: Alfredo C. Ramos, Presentacion Ramos, George S.K. Ty, Atty. Emmanuel Leonardo, and a certain Mr. Cayaban, did not appear during the scheduled hearing. However, Alfredo and Presentacion Ramos appeared in the morning of that day ahead of the complainant in which they submitted their respective counter-affidavits, subscribed and sworn to before ACP Yap. The respondents asked that they be allowed to submit their counter-affidavits ahead of the scheduled hearing because they had an urgent matter to attend to in the afternoon. In the case of George S.K. Ty and Mr. Cayaban, their respective counter-affidavits were submitted by their lawyers during the scheduled hearing in the afternoon, already subscribed and sworn to before a Pasig Prosecutor. Atty. Leonardo did not submit any counter-affidavit.

Because of ACP Yap's failure to require the presence of respondents in said cases simultaneously with the complainant, Mr. Sierra asked for the prosecutor's inhibition. The cases were then re-raffled to the respondent ACP Marlo Campanilla who likewise did not require the presence of the respondents in the preliminary investigation. Because of this, he too was asked to inhibit from the cases by complainant.

The cases were then re-raffled to ACP Armando Velasco who also handled the cases in the same manner as the two other prosecutors before him. City Prosecutor Jhosep Y. Lopez and 1[st] ACP Eufrocino A. Sulla affirmed the correctness of the manner in which their investigating prosecutors handled the cases.

On April 26, 2007, Sierra filed a complaint with the Supreme Court for dereliction of duty and gross ignorance of the law against City Prosecutor Lopez, 1[st] ACP Sulla, ACP Yap, ACP Campanilla, and ACP Velasco.

In his complaint, Sierra raises the following questions of law: (1) whether the parties must appear together before

the investigating prosecutor during preliminary investigation; (2) whether the counter-affidavits of the respondents should be sworn to only before the investigating prosecutor; and (3) whether the investigating prosecutor erred in denying the request of the complainant for clarificatory questioning.

The Supreme Court Third Division then issued a Resolution dated July 25, 2008 requiring respondents to comment on the complaint.

In compliance with the Honorable Court's order, respondents filed their Comment dated March 7, 2008 stating that they handled the cases properly and in accordance with what was provided by law. They also argued that they had not committed any dereliction of duty and gross ignorance of the law.

We find no merit in the complaint.

Rule 112, particularly Section 3 of the Rules of Court, lays down the basic procedure in preliminary investigation, as follows:

Sec. 3. Procedure. - The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits, shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

This provision of the Rules does not require a confrontation between the parties. Preliminary investigation is ordinarily conducted through submission of affidavits and supporting documents, through the exchange of pleadings.

In *Rodis, Sr. v. Sandiganbayan*[1] we ruled that -

(the New Rules on Criminal Procedure) do not require as a condition sine qua non to the validity of the proceedings (in the preliminary investigation) the presence of the accused for as long as efforts to reach him were made, and an opportunity to controvert evidence of the complainant is accorded him. The obvious purpose of the rule is to block attempts of unscrupulous respondents to thwart the prosecution of offenses by hiding themselves or by employing dilatory tactics.

Since confrontation between the parties is not imperative, it follows that it is not necessary that the counter-affidavit of respondent be sworn to before the investigating prosecutor himself. It can be sworn to before another prosecutor. In fact, this is specifically provided in paragraph (c) of Sec. 3, which states that the "counter-affidavit shall be subscribed and sworn to and certified as provided in paragraph (a) of this section x x x"; and paragraph (a), provides:

the affidavits shall be subscribed and sworn to before any prosecutor or government official or in their absence or unavailability, before a notary public x x x.

Lastly, we hold that the investigating prosecutors did not abuse their discretion when they denied the request of the complainant for the conduct of clarificatory questioning. Under paragraph (e) of Section 3 above, the conduct of clarificatory questioning is discretionary upon the prosecutor. Indeed, we already held in *Webb v. De Leon*[2] that the decision to call witnesses for clarificatory questions is addressed to the sound discretion of the investigator, and the investigator alone.

WHEREFORE, premises considered, the complaint is DENIED for lack of merit.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] G.R. Nos. 71404-09, October 26, 1988, 166 SCRA 618.

[2] G.R. Nos. 121245 & 121297, August 23, 1995, 247 SCRA 653.

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