MARIO W. CHILAGAN, SR. COMPLAINANT, VS. ACTING PRESIDING JUDGE EMELINA L. CATTLING, 3RD MCTC, ALFONSO LISTA-AGUINALDO, MAYOYAO, IFUGAO, RESPONDENT.

A.M. No. MTJ-01-1382 (A.M. No. 00-888-MTJ). November 16, 2001

Ponente: BUENA, J.

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BUENA, J.:

In his Sworn Letter-Complaint dated 1 May 2000 and Letter-Complaint dated 16 July 2000, with enclosures, complainant charges respondent Acting Judge Emelina L. Cattiling with Gross Ignorance of the Law and Grave Abuse of Authority relative to the following cases, to wit:

1.) In Civil Case No. III-00-91 entitled, "Jessie C. Domingo vs. Oliver Pavo, et al.," for Forcible Entry with Prayer for a Writ of Preliminary Mandatory Injunction and Damages, complainant, one of the defendants therein, alleges that a day after the case was filed, respondent issued a Temporary Restraining Order (TRO) without notice and hearing. Complainant claims that summons and copy of the complaint were not served on the defendants and there was no application for TRO in the complaint. Complainant further alleges that respondent issued a preliminary injunction without the order fixing the amount of bond required; that she merely relied on the allegation that the amount of P50,000.00 was deposited with the Clerk of Court and which amount was reduced to P40,000.00; that inquiry revealed that no such amount was deposited and that the amount was missing.

Complainant alleges in his Supplemental Affidavit Complaint dated 12 December 2000, that on 8 September 2000, respondent Judge rendered a decision in favor of the plaintiffs. On 21 September 2000, complainant, through counsel, filed a Notice of Appeal. Allegedly, despite receipt of the notice of appeal and the Urgent Opposition to the Motion for Execution, respondent issued a Writ of Execution on 3 October 2000. Complainant also avers that despite the perfection of appeal and payment of appeal fee, respondent ordered the demolition of the structures built by occupants of the land subject matter of the case.

2.) In Criminal Case No. III-96-353, entitled "People vs. Ruben Pagatpatan," for Murder, complainant claims that he is a relative of the victim, a six-year old boy who was twice run-over by the motorcycle of the accused. Complainant alleges that a criminal complaint for Murder against the accused was filed by the police. Complainant avers that respondent took it upon herself to investigate the case despite the presence of Assistant Prosecutor Joseph Baguilat and recommended that the offense to be charged against the accused should only be homicide through reckless imprudence. Respondent allegedly recommended bail of P5,000.00 and later released the accused. Complainant states that when the case was investigated by the Provincial Prosecutor of Ifugao, the crime charged was elevated to murder.

3.) In Civil Case No. III-98-74 entitled "Thomas Bastian vs. Corazon Apagan, et al.," for tender of Payment, Consignation, Redemption and Damages With prayer for Preliminary Injunction, complainant alleges that without issuing a notice of hearing, respondent issued a restraining order dated 11 January 1999, and ordered the plaintiff to put up a bond in the amount of P20,000.00. Complainant avers that on 12 December, prior to the issuance of

the restraining order, plaintiff offered the property in dispute, land covered by TD No. 93-140 of the property rolls of Aguinaldo, Ifugao, as injunction bond. On 15 June 1999, respondent allegedly approved the said bond and issued the preliminary injunction without the necessary hearing. Complainant suspects that respondent is in cahoots with plaintiff's counsel regarding the irregular issuance of several orders. Complainant also notes that the P20,000.00 is missing.

On 1 September 2000, the Legal Office, Office of the Court Administrator, received an undated and unsigned comment consisting of 4 pages and enclosures, which apparently came from respondent Judge Cattiling.

Anent Civil Case No. III-00-91, respondent Judge explains that complainant is one of the 29 defendants in the civil case and enumerates the series of events that transpired as follows: The Court received the complaint on 13 March 2000. The following day, an ex-parte urgent motion for immediate hearing on the prayer for the issuance of a writ of preliminary injunction was filed. On 15 March 2000, the last day of the month for respondent to report at MCTC, Alfonso Lista, a TRO was issued to all persons named as defendants in the complaint in compliance with BP Blg. 224, the rule on the issuance of TRO. The Court set the hearing of the application for preliminary mandatory injunction on 3 April 2000. A copy of the order and summons were served to all the defendants including herein complainant whose copy was sent through the PNP Warrant Officer of Mayoyao, Ifugao on 16 March 2000, and received by said Warrant Officer on 29 March 2000. On 3 April 2000, the application for a writ of preliminary mandatory injunction was heard with only three of the 29 defendants appearing through counsel. Evidences for both sides were presented. On the same day, the Court issued an order for the issuance of writ of preliminary mandatory injunction and plaintiff was ordered to put up a bond of P40,000.00 with the Clerk of Court. On 10 April 2000, the Court issued the Writ of Preliminary Mandatory Injunction after plaintiff posted an injunction bond. The writ was served on the defendants on 11 April 2000.

On the supplemental complaint (regarding Civil Case No. III-00-91), respondent states in her Comment thereto that MCTC Alfonso Lista already lost jurisdiction of the case on 9 October 2000 when the court directed that the records be transmitted to the Regional Trial Court. Thus, she could no longer have issued any order relative to the case; more so the alleged order of demolition complained of. Respondent also states that complainant ought to have attached the questioned order to prove his allegation. As to the implementation of the order of demolition, respondent claims to have no knowledge of the fact of demolition because no order was ever issued.

Anent Criminal Case No. III-96-353, respondent claims that she conducted the preliminary investigation because the complaint was received by and filed with the MCTC, Alfonso Lista. She avers that as a Municipal Judge, she is authorized to conduct preliminary investigation pursuant to Section 2, Rule 112 of the Rules on Criminal Procedure.

Except for respondent's act of downgrading the crime charged from murder to homicide through reckless imprudence, the other charges are devoid of merit.

The issue raised relative to the issuance of the TRO and preliminary injunction is belied by the narration of the series of events that transpired in Civil Case No. III-00-91. Complainant failed to prove that the issuance of the TRO and the preliminary injunction is attended with irregularity. As to the charge that respondent issued writ of execution despite the perfection of appeal, complainant failed to adduce evidence that he filed the necessary bond and deposited the reasonable compensation to stay execution, pursuant to Section 19, Rule 70, of the Revised Rules on Civil Procedure. In the absence of proof that he complied with the requirements of the said Rule, there is no reason to hold that the execution of the judgment pending appeal was irregular.

With regard to Crim. Case No. III-96-353, on the allegation that respondent has no authority to conduct preliminary investigation because of the presence of the Asst. Provincial Prosecutor in the area, we find

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respondent's act to be in accordance with Section 2, Rule 112 of the Rules on Criminal Procedure that judges of the Municipal Trial Courts and Municipal Circuit Trial Courts are authorized to conduct preliminary investigation.

We, however, find respondent in error when she reduced the charge of Murder to Homicide through Reckless Imprudence. The Court in a number of cases has declared that a municipal judge has no authority to determine the character or designation of the crime but only to determine whether or not the evidence presented supported prima facie the allegations of facts contained in the complaint.[1] The power to amend a complaint at any time before the accused pleads, both in form and substance, without leave of court, is lodged in the prosecuting officer and not in the trial judge.[2]

Respondent failed to submit her comment on the allegations relative to Civil Case No. III-98-74. Nevertheless, no valid ground is found to hold her liable for the charges therein. Besides being unsubstantiated, the allegations as presented by complainant are quite hazy. Moreover, complainant does not appear to be a party to the case. No further investigation on the matter is warranted.

WHEREFORE, respondent Judge Emelina L. Cattiling is FINED in the amount of Five Thousand Pesos (P5,000.00) for amending the criminal charge from murder to homicide through reckless imprudence in Criminal Case No. III-96-353 and the other charges against respondent are DISMISSED for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

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[1] Depamaylo vs. Brotarlo, 265 SCRA 151 [1996]; Bais vs. Tugaoen, 89 SCRA 101 [1979].

[2] Balagapo, Jr. vs. Duquilla, 238 SCRA 645 [1994].

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