

ROGELIO A. BAIS, COMPLAINANT, VS. HON. MARIANO C. TUGAOEN OF ZAMBOANGUITA, NEGROS ORIENTAL, RESPONDENT.

A.M. No. 1294-MJ. March 23, 1979

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Administrative complaint against Municipal Judge Mariano Tugaoen of the Municipal Court of Zamboanguita, now of the 5th Municipal Circuit Court of Dauin-Zamboanguita, for ignorance of the law, abuse of power and authority and partiality in the administration of justice.

It appears that herein complainant, Rogelio A. Bais, filed before the Municipal Court of Dauin a complaint against Fr. Roman Suelto for grave slander. Respondent judge, M. Tugaoen, conducted a preliminary investigation after which he amended *motu proprio* the complaint by making an official pronouncement, to wit:

"Wherefore, by virtue of the above premises, the Court finds *prima facie* evidence that R. Suelto xxx committed the crime of Slight Slander under Article 358 of the Revised Penal Code."

Motions for reconsideration were filed but denied. A motion to disqualify respondent judge from trying the case in view of his glaringly apparent prejudgment of the case was also filed and denied.

On September 17, 1975, complainant filed a motion to dismiss the criminal case because his witnesses have signified their intention to desist from testifying. He would want also to refile his case in the Office of the Provincial Fiscal where he thought he could get true justice. The following day, September 18, 1975, a trial was held where respondent judge verbally ordered the denial of the motion to dismiss. Complainant asked for a written copy of the order. This was denied on the ground that the order was given orally. Complainant moved for a reconsideration of the order. This motion for reconsideration was however denied. Then, the respondent judge proceeded with the trial on the merits, after allowing the accused, through his counsel, to enter a plea of "not guilty". (pp. 76-77, Rollo).

On October 13, 1975, complainant filed motion to file petition for certiorari, injunction and prohibition and motion to defer trial on hearing. On October 16, 1975, the trial of the case was resumed. During said trial, respondent judge orally asked the complainant if he will stand by or pursue his motion to dismiss dated September 16, and complainant answered or replied "yes, your Honor" and right then, the motion to dismiss was granted, lifting the order of denial, thus dismissing the case. (pp. 5-6, Rollo).

The complainant then filed the same complaint with the Office of the Provincial Fiscal, but said filing was denied by the Provincial Fiscal in a resolution dated January 16, 1976, on the ground of double jeopardy.

Hence, complainant filed an administrative case against the respondent judge on the ground that the actuations of the latter were tainted with the following:

I. Ignorance of the law, in that the respondent judge, after conducting the preliminary investigation of the case ordered the arrest of the accused, fixed the bail bond at P50.00 and amended *motu proprio* his complaint by

cancelling the phrase Grave Slander and replacing it with Slight Slander, in gross violation of Section 13, Rule 110 and Section 9, Rule 112 of the Rules of Court. Likewise, in ordering the arrest of the accused respondent judge went beyond Section 9, Rule 112 of the Rules of Court after considering the accused as having committed a light felony; and by this act of the respondent judge, he either did not know the law or if he did, he knowingly violated it. (p. 2, Rollo).

II. Abuse of power and authority, in that respondent judge denied complainant's Motion for Reconsideration and the Motion to Disqualify him from trying the case filed before him, and threatened to summarily hold complainant in contempt of court; and that the respondent judge, notwithstanding the Motion to Dismiss filed with him by the complainant, ordered the trial of the case based on the charge of Slight Slander as amended by him *motu proprio*, and allowed the lawyers for the accused to enter a "plea of not guilty", obviously to prejudice his case against Roman Suelto for the crime of Grave Slander, because afterwards, the respondent judge dismissed the complaint on the basis of the motion for reconsideration which he had denied before the counsel for the accused could enter a plea of not guilty. (p. 4, Rollo).

III. Partiality in the administration of justice, in that the actuations of the respondent judge in handling the case was tainted with partiality in the administration of justice by:

"(1) Amending his complaint *motu proprio* without authority of law, obviously to accommodate the accused who is a priest after learning that the evidence against him is strong.

"(2) Allowing the lawyers for the accused to enter a 'plea of not guilty' to a charge as amended by him notwithstanding the fact that a Motion to Dismiss is still pending before him, apparently to accommodate the accused and prejudice the case knowing fully well that if it was dismissed before the accused could interpose a 'plea of not guilty', the case can still be revived in the office of the Fiscal.

"(3) Dismissing the case only after the accused was able to enter a plea of not guilty thru his counsels, manifestly to bar complainant from refileing the case in the office of the Fiscal, as in fact he was barred from reviving it, on the ground that the principle of double jeopardy had already set in." (p. 5, Rollo),

Asked to comment on the complaint, respondent judge filed his comment dated July 25, 1976. (pp. 22-28; Rollo). Respondent judge averred that all the charges against him "are closely related with each other and records will disclose that there is no truth to the complaint of the complainant, further alleging that the latter-complaint is characterized with inaccuracies and reckless choice of phrases and shot through with misinterpretations."

Respondent judge took exception to the charge that he violated certain provisions of the Rules of Court which complainant branded as tantamount to ignorance of the laws. He maintained that it is within his power and as duly designated Municipal Judge to try Criminal Case No. 684 to issue the corresponding warrant of arrest against the accused therein, Fr. Roman Suelto, which he did only after conducting the preliminary investigation and finding that a *prima facie* case exists that said accused committed the crime of Slight Slander and not Grave Slander as insisted on by herein complainant; that he also maintained as within his power to change the designation of the crime from "Grave Slander" to "Slight Slander" as both crimes fall under the same provision of Article 358 of the Revised Penal Code and the allegations in the body of the complaint were left unchanged; that said change was done for the speedy administration of justice and cited as his authority in doing so the cases of *People vs. Macalinao, et al.*, CA-G.R. No. 52-R (L-247), January 5, 1947 and *U.S. vs. Lim San*, 17 Phil. 273 where it was held that the "designation of the crimes in the caption of the information is a conclusion of law on the part of the fiscal and the court is the only person or institution authorized by law to say what crime has been committed." He further contends that in the preliminary examination, replacing the nature of the crime can be done without affecting the substantial rights of the defendant, as from grave to slight slander where the allegations in the complaint support the lesser crime. It is different, he continues, when the proper offense has not been charged, in which case, the complaint should be dismissed.

To further bolster his foregoing contention, the respondent judge also averred:

"Section 13, Rule 110, of the Revised Rules of Court refer to amendment of a complaint or information before the defendant pleads. The amendment either in substance or form may be made without leave of court at any time before the defendant pleads; after he had pleaded, no amendment may be made without leave of court. This means that the court has discretion to permit amendment or not. However, such discretion exists only as to amendment on matters of form. With respect to matters of substance, the court has no such discretion. This contemplates a trial on the merits and certainly not on preliminary examination xxx". (p. 25, rollo).

Asked to submit a reply to the comment of respondent judge if he so desires, the complainant filed his reply dated September 18, 1976.

Thereafter, by resolution of this Court dated September 28, 1977, the complaint was referred to the Executive District Judge of Negros Oriental for investigation, report and recommendation.

Hon. Segundino G. Chua, Executive District Judge of Negros Oriental, in obedience to the aforesaid directive of this Court, set on several dates the investigation of this administrative complaint, and thereafter, on April 12, 1978 issued the following order, to wit:

"The investigation of this case, pursuant to the resolution of the Supreme Court dated September 28, 1977 and the communication dated October 18, 1977 of the acting Judicial Consultant, has been set twice, first, on February 8, 1978 and today, March 16, 1978. On February 8, 1978 only the complainant appeared. The respondent Municipal judge did not show up probably because he had earlier filed a motion for immediate resolution and/or decision of the case based on the records thereof. On said date, February 8, the undersigned investigator suggested to the complainant that for the benefit of all concerned this case ought to be settled amicably considering that he, the complainant, is the sub-station commander of Dauin, while the respondent judge is the circuit judge thereat and both officials are by law supposed to work hand in hand and in close cooperation with each other. The complainant manifested that he was open for negotiation to have the case settled amicably, if possible, and the case was reset for hearing on March 16, 1978, with direction that both parties appear personally before the undersigned investigator. (See Order, February 8, 1978).

"On March 16, 1978 only the respondent judge appeared despite proper notice to the complainant and the former orally moved for the dismissal of the case. This motion was denied in order to afford the complainant a last chance to prosecute the case if at all he was still interested therein and the hearing was reset for the last time today, April 12, 1978. (See Order, March 16, 1978).

"Both parties appeared today. The complainant forthwith made known his desire to desist from prosecuting his complaint and he executed an affidavit of desistance which is hereby made an integral part of the records. This affidavit of desistance which bears the conformity of the respondent judge reads in full:

"I, Rogelio Bais, Filipino, of legal age, married and with residence at Poblacion, Dauin, Negros Oriental, after having been duly sworn in accordance with law, hereby depose and say:

"That I am the complainant in Administrative Case No. 1294-MJ against the Honorable Municipal Judge designate of Dauin who is permanently stationed as of now at Zamboanguita, Negros Oriental;

"That the complaint which I have filed against the respondent judge charges him with the following: ignorance of the law, abuse of authority and partiality in the administration of justice;

"That all these charges arose from a case of grave slander involving me as complainant which I filed against Roman Suelto, the parish priest of our town, before the municipal court presided over by the said respondent judge who found instead prima facie evidence against the defendant only for slight slander;

"That I did not agree with the findings of the respondent judge with regard to the nature of the offense and so a

misunderstanding developed between us which finally compelled me to file the present administrative case;

"That as time passed, however, I finally realized my impulsive and precipitate action on the matter and after weighing all considerations and after meeting personally with the respondent judge, I have decided to withdraw the aforesaid administrative case;

"That finally, I petition that this investigator and the Honorable Supreme Court to drop this case.

(Sgd.) ROGELIO BAIS

t/ ROGELIO BAIS

Affiant

"Subscribed and sworn to before me this 12th day of April, 1978, at the City of Dumaguete, Philippines.

(Sgd.) SEGUNDINO G. CHUA

t/ SEGUNDINO G. CHUA

Executive Judge

"With my conformity:

(Sgd.) MARIANO C. TUGAOEN

t/ MARIANO C. TUGAOEN

Respondent Municipal Judge"

"WHEREFORE, it is respectfully recommended that this administrative case against respondent municipal judge Mariano C. Tugaoen be dropped and considered closed and terminated." (p. 146, Rollo).

After a careful review and perusal of the entire records of this administrative complaint, this Court cannot give full concurrence with the above recommendation of the Investigating Judge to the effect that this case be dropped and considered closed and terminated. This Court looks with disfavor at the outright dismissal of this complaint upon mere affidavit of desistance executed by complainant where on the basis of the evidence presented and records of the case, herein respondent should at least be severely warned to be more discreet in the performance of his judicial function so as to keep inviolate the faith and confidence of the people in our judicial system.

It is not disputed that herein respondent after conducting a preliminary investigation in Criminal Case No. 684, *motu proprio* and over the objection of the prosecution changed the designation of the crime charged from Grave Slander to Slight Slander. Respondent judge justified his action by insisting that he is possessed with such power and that the same was done for the speedy administration of justice. This Court, however, is not prepared to sustain this view for Section 13, Rule 110, Rules of Court is clear that the matter of changing the designation of the appropriate crime in an information or complaint is vested in the prosecution and not in the trial judge, and in the instant case, the change may be done by the prosecution even without leave of court since the defendant or accused has not as yet entered his plea. The law providing that the information or complaint maybe amended in substance or form without leave of court any time before the defendant, pleads lodges a discretionary power in the prosecuting officer. (*Conde vs. CFI*, No. 21236, October 1, 1923, 45 Phil. 173). So, the person authorized to amend the complaint or information is only the prosecuting officer and not the trial judge. The contention of the respondent judge that he had the right to amend the designation of the crime in a preliminary investigation which is not the trial proper is untenable. The purpose of preliminary investigation is primarily to determine whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty

thereof, so that a warrant of arrest maybe issued and the accused held for trial. It is not within the purview of the preliminary investigation to give the judge the right to amend, *motu proprio* the designation of the crime. When the crime comes within his jurisdiction, he shall try the case, and only after trial may he convict for a lesser offense. In a case coming within the original jurisdiction, of the Court of First Instance, he should elevate the case as it is, even if in his opinion, the crime is less than that charged.

The respondent judge's act of allowing the accused, through his counsel, to plead "not guilty" after an oral denial after hearing, of the complainant's motion to dismiss, and later lifting the order denying the motion to dismiss in order to dismiss, as he did, the complaint, is not within the proper bounds of law. The motion to dismiss was already denied, and with a plea of not guilty thereafter entered, trial on the merits was in order. For the respondent judge to have asked the complainant before proceeding to trial whether the latter was standing by or pursuing his already denied motion to dismiss, and on having been given an affirmative answer, respondent judge dismissed the case after the accused had already pleaded, suspicion is easily aroused that the move taken by him was deliberately designed to favor the accused against whom the case could no longer be refiled with the Provincial Fiscal, as was the motive for complainant's motion to dismiss, because double jeopardy has already set in.

This Court has also noted from respondent's answer that he issued a warrant of arrest, instead of a mere summons against the accused in said Criminal Case No. 684, as provided for in Section 9, Rule 112 of the Rules of Court. Respondent's justification that a warrant of arrest was issued by him and not merely a summons was because that was what the accused priest desired. This explanation is hardly believable to justify the error he committed, by reason of which, one of the grounds of the complaint, that of ignorance of the law, may seem not to be entirely wanting in factual basis. It is for having erred to the prejudice of the accused priest that respondent judge displayed suspicious partiality in favor of said accused to make up for his error in issuing a warrant of arrest instead of a mere summons as prescribed by the Rules, against the accused, a judicial norm obviously reprehensible.

WHEREFORE, in view of the foregoing, the respondent judge is hereby fined one-month pay, with a stern warning that a similar act or omission in the future will be dealt with more severely.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

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