

FRANCISCO RODRIGUEZ, COMPLAINANT, VS. HON. SILVINO LU. BARRO OF THE CITY COURT OF GINGOOG CITY, RESPONDENT.

A.M. No. 1587-CTJ. August 23, 1978

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Administrative complaint against a city judge for neglect of duty and/or gross ignorance of the law, for having failed to act sooner upon a motion to dismiss a criminal case, filed by the prosecution, and by this omission, the accused therein unnecessarily languished in jail for more than one month.

It appears of record that on April 28, 1976, Valeriano Ostia filed a complaint for adultery against his wife Alicia Ostia and Ariston Varquez with the City Court of Gingoog City,[1] presided by the respondent Judge Silvino Lu. Barro, and a subpoena was issued by the clerk of court on May 21, 1976, for the parties to appear on June 4, 1976, for hearing.[2] When the case was called for hearing on that day, the court found that the accused Alicia Ostia had not yet been arrested, so the immediate arrest of the said accused was ordered and the arraignment and trial was reset to July 20, 1976.[3] On July 8, 1976, counsel for the accused Ariston Varquez filed a motion in court asking that a preliminary investigation be conducted in the case and set the hearing of his motion on July 20, 1976.[4]

On July 20, 1976, the city court granted the motion and remanded the case to the City Fiscal for a preliminary investigation.[5] On this same day, the accused Alicia Ostia was confined at the City Jail in connection with this case.[6]

On July 29, 1976, Special Counsel Downey C. Valdevilla of Gingoog City filed a motion to dismiss the case, based upon the affidavit of desistance executed by Valeriano Ostia on June 5, 1976. Counsel asked the clerk of court to "set the foregoing Motion to Dismiss for consideration and/or resolution of the Honorable Court immediately upon receipt hereof, sans oral argument." [7] The clerk of court, however, set the hearing of the Motion to Dismiss on August 30, 1976 and issued a subpoena to the parties for that purpose.[8] After hearing the parties on August 30, 1976, the court dismissed the case,[9] and the accused Alicia Ostia was released from confinement.[10]

On February 11, 1977, the complainant, a concerned citizen and allegedly acting at the behest of Alicia Ostia, filed a complaint with the President against the respondent judge for neglect of duty and/or gross ignorance of the law for having failed to act sooner upon the motion to dismiss filed by Special Counsel Downey C. Valdevilla and as a consequence of which the accused Alicia Ostia languished in jail for more than one (1) month. It also prayed for the dismissal of the respondent judge from the service. The said complaint was referred to the Court by the Presidential Assistant for Legal Affairs.

Commenting on the complaint, the respondent judge disclaimed liability therefor and stated that the complaint was filed to harass him. He explained that all pleadings are filed with the clerk of court and he knows nothing of the pleadings filed unless the clerk of court invites his attention thereto, so that "when the attention of the undersigned was called on the motion to dismiss filed by the Special Counsel he directed his clerk of court, who

incidentally is still not well versed with what he should do being new in court, to set the motion for hearing and to notify the complainant for this to be personally present during the hearing. Since Gingoog is not Manila where a process server can hail a taxi or get his vehicle and see the parties immediately and in view of the number of other cases already calendared for consideration and trial, and since the process server has to hike many kilometers to and in the mountains before reaching the parties concerned, the clerk of court must not have found an earlier available date except August 30, 1976, so said motion has to be considered not earlier than said date. And on August 30, the undersigned had to satisfy himself by directing questions to the complainant on the latter's statements in the affidavit attached to the motion to dismiss in order to be assured that the complainant was not coerced or pressured into 'withdrawing his case.' A judge does not just swallow what anyone says or alleges - he has to administer justice." [11]

While We find the action of the respondent Judge in setting the motion to dismiss for hearing to be laudable, in order to forestall a hasty and precipitate dismissal of a criminal case, his explanation for not acting upon said motion to dismiss earlier is not satisfactory. The respondent Judge cannot plead in avoidance the negligence or ignorance of the clerk of court, especially in view of the provisions of the last paragraph of Section 75 of the Judiciary Act of 1948, as amended by Republic Act No. 3828, that the clerk of court, stenographers, and other minor employees of the city courts are appointed by the respective city judges. It is the obligation of judges to see that the officers appointed by them comply fairly and strictly with the duties that the law imposes upon them.

It is also the duty of judges to judiciously apportion the court's time to achieve speedy dispatch of cases consistent with justice. This is implied in the mandate that "justice shall be impartially administered without unnecessary delay." [12]

His allegation that it is hard to serve a process in Gingoog City is belied by the "SUBPOENA ON A MOTION TO DISMISS", issued on August 27, 1976, which appears to have been served upon the addressees on the same date. [13]

The court has time and again enjoined judges to be more circumspect and diligent in the performance of their functions, and the respondent Judge had been previously severely reprimanded for his carelessness and negligence, and enjoined to exercise henceforth due care and diligence in the discharge of his function, with a warning that a repetition of such misconduct would be dealt with more severely." [14] Notwithstanding such admonition and warning, the respondent Judge has again been found to be remiss in the performance of his duties. A more severe penalty than a reprimand is, therefore, called for.

WHEREFORE, the respondent Judge is hereby ordered to pay a fine equivalent to his salary for one month.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] Rollo, pp. 3, 28.

[2] Id., p. 15.

[3] Id., p. 17.

[4] Id., p. 18.

[5] Id., p. 19.

[6] Id., p. 25.

[7] Id., pp. 20, 21.

[8] Id., p. 22.

[9] Id., p. 23.

[10] Id., p. 25.

[11] Id., p. 9.

[12] Section 1, Rule 135, Revised Rules of Court.

[13] See Rollo, p. 22.

[14] Adm. Matter No. 179-CJ, Aguinaldo Moral vs. Silvino Lu. Barro, Sept. 28, 1973.

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