

AVELINA SERAFIN, COMPLAINANT, S. MUNICIPAL JUDGE SANTIAGO LINDAYAG, RESPONDENT.*A.M. No. 297-MJ. September 30, 1975*

Ponente: TEEHANKEE, J.

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The Court finds from the documentary evidence and established facts of the case that respondent municipal judge grossly failed to perform his duties properly and is unfit for the office and therefore orders his separation from the service. It is self-evident from the very face of the "criminal complaint" for estafa, and the supporting sworn statements filed with and sworn to before him as well as the very notes of preliminary examination taken by him that the "criminal" charge against complainant showed no vestige of the essential elements of estafa but simply recited complainant's failure to pay the creditors as alleged offended parties a simple indebtedness. Respondent judge's subsequent crass attempt at exculpation by the submission of spurious evidence to cover up his liability is more reprehensible than his guilt under the charge and shows his unworthiness for the office.

Complainant originally filed on October 19, 1971 with the Secretary of Justice the instant administrative complaint for capricious and malicious admission in his court of a criminal complaint for estafa against complainant and causing her wrongful arrest and detention, against respondent Santiago Lindayag, municipal judge of Guiguinto, Bulacan. On December 28, 1971, then Executive Judge Andres Sta. Maria to whom the administrative complaint had been referred sent his indorsement to the Department of Justice recommending the exoneration of respondent on the ground that complainant, assisted by her counsel, had filed a motion to withdraw her complaint.

No further action was taken until January 29, 1973 when the Department of Justice forwarded the record of the case to this Court. After the transfer to this Court of the power of administrative supervision over all inferior courts with the power to discipline and dismiss judges under the 1973 Constitution,[1] the Court, in view of the gravity of the charges as borne out by the documentary evidence, referred anew on October 29, 1973 the complaint to the District Judge of Baliwag, Bulacan for investigation and report, notwithstanding the previously reported withdrawal of the complaint. The Court per its Resolution of December 19, 1973 denied respondent's petition to "consider the matter closed and terminated" by virtue of the previous recommendation in 1971 of Judge Sta. Maria and directed the District Judge to proceed with the investigation.

On February 11, 1974, the Court received the overly long and detailed 34-page (single-space) report[2] of the investigation conducted by Judge Juan F. Echiverri of the Baliwag court of first instance. The complaint with its documentary evidence, the Investigator's Report and record of the proceedings and the evidence of record amply substantiate the complaint, notwithstanding complainant's desistance because she afterwards took pity on respondent and no longer wanted to be involved in the case, as manifested by her when she appeared at the hearing and submitted the documentary evidence supporting her complaint, pursuant to the process issued by the Investigating Judge for her attendance.

The criminal complaint for estafa against complainant (docketed as Criminal Case No. 1602) was filed on July 21, 1971 with respondent judge by then Guiguinto chief of police Juan P. Estrella at the instance of Carmelito Mendoza, then municipal secretary and his wife Corazon Mendoza. Said complaint sworn to by said police chief before respondent judge on its face does not charge any crime but merely recites complainant's failure to pay a simple indebtedness, thus:

"That on or about the 20th day of July 1971, in the Municipality of Guiguinto, Province of Bulacan, Philippines and within the preliminary jurisdiction of this Honorable Court, the above-named accused with intent of gain did then and there willfully, unlawfully and feloniously owe the sum of ONE THOUSAND FIVE HUNDRED (P1,500.00) PESOS, Philippine Currency, that said amount has long been due since January 28, 1971 and Mrs. Avelina N. Serafm failed to pay her account in spite of due notice sent by registered mail and up to the present she failed to settle her obligation."[3]

The supporting statements⁴ executed and sworn to by the Mendoza spouses as offended parties before respondent judge likewise show on their very face that their complaint was about a simple debt of P1,500.00 borrowed by complainant from Mrs. Mendoza and which she had failed to repay despite her promise to do so by January and February, 1971. (Both sworn statements recite that complainant borrowed the amount — "ay umutang . . . si ginang Avelina N. Serafin" and did not pay the same.).

The notes taken during the preliminary examination conducted by respondent,⁵ consisting of seven simple questions propounded by police chief Estrella as "private prosecutor" and of seven simple answers thereto given by Carmelito Mendoza show beyond doubt that there is no vestige of the essential elements of estafa as provided in Article 315 of the Revised Penal Code but that they had simply lent complainant the sum of P1,500.00 without any collateral or security because complainant was an old friend ("sapagkat matagal na naming siyang kaibigan"), that they believe her to be a good person ("at ang paniwala namin ay mabuti siyong tao") and that when they wrote her a letter of demand, she promised to pay them and said that if she failed to keep her promise, they could get her valuable things at her home.

In the same notes of preliminary examination, there is recorded as one "searching question and (sic) provided for by Republic Act sec. (sic) 6"[6] what appears to be respondent's question as to whether complainant had paid the money taken by her and Mendoza's answer in the negative, stating that such non-payment was the reason why they filed the complaint so that she would be punished![7]

In admitting such a "criminal complaint" that was plainly civil in aspects from the very face of the complaint and the "evidence" presented, and issuing on the same day the warrant of arrest upon his utterly baseless finding "that the accused is probably guilty of the crime charged," respondent grossly failed to perform his duties properly — which in this instance was to dismiss the complaint outright since it is elementary that nonpayment of an indebtedness is not a criminal act, much less estafa; and that no one may be criminally charged and punished for non-payment of a loan of a sum of money.

In recklessly issuing the warrant of arrest on July 22, 1971, respondent further enabled police chief Estrella as "private prosecutor" of complainant's creditors, the Mendozas, to avail of the despicable practice of some police officers to use the warrant as a means of harassment and serve it on Saturdays when the person arrested cannot raise bail, as in fact complainant was arrested on a Saturday, July 25, 1971 at a time when the bonding companies were closed for business and she consequently had to undergo the humiliation of being detained for three days in the municipal jail up to July 28, 1971 when she finally succeeded in putting up the P1,000.-bail bond fixed for her release.[8]

A modicum of circumspection on the part of respondent could have easily prevented such an injustice and

trampling upon of the complainant's basic rights. Indeed, two months afterwards, upon the merit of complainant's counsel's motion to quash the criminal complaint (which motion, however, somehow and notably got lost from the record of the case, *infra*) respondent in an Order dated September 30, 1971 ultimately found the quashal motion as "well taken" and ordered the dismissal of the case.

The Judiciary Act, Republic Act No. 296. precisely requires in section 87 thereof that "(N)o warrant of arrest shall be issued by any municipal judge in any criminal case filed with him unless he first examines the witness or witnesses personally, and the examination shall be under oath and reduced to writing in the form of searching questions and answers." Respondent utterly failed to comply with this requirement of searching questions and answers in his examination of the complaining witness. Worse, the one question propounded by him shows that he did comprehend that the "criminal" complaint involved a mere failure to pay a simple indebtedness and yet he found probable cause of the herein complainant's guilt of estafa and forthwith issued the warrant of arrest against her — which would indicate that either he believed that non-payment of an indebtedness constitutes the crime of estafa which would make him guilty of gross ignorance of the law or although knowing the law, of nevertheless disregarding it and giving due course to the town police chiefs "prosecution" on behalf of the municipal secretary which would constitute an utter betrayal of his oath of office to render justice to every man.

It should also be noted that the Court directed the Investigating Judge to include in his report of investigation certified true copies of the complete records of the criminal case thus filed against complainant. This could not be wholly complied with, due to the loss of some of the records of the said Criminal Case No. 1602, attributed by respondent to damage wrought by the 1972 floods.

Strangely enough, however, the motion to quash filed by complainant through counsel which was eventually granted by respondent after two months was allegedly never found. Said motion to quash would have been most likely on the self-evident ground that the facts charged do not constitute an offense since no evidence whatever was presented by herein complainant in support thereof and respondent's order of September 30, 1971 granting the same and dismissing the case made no mention of any counter-evidence from complainant but simply granted the same as "meritorious and well-taken."^[9] If so, the motion to quash would have further reinforced the complaint that respondent either out of ignorance or partiality and malice issued the baseless warrant of arrest. Respondent, notwithstanding the hearing given him on September 12, 1974, by the Court and a further opportunity to submit a memorandum which was filed by him on November 11, 1974, did never clarify or explain to the Court's satisfaction this matter as well as his other anomalous actions, as set forth in this decision.

The alleged loss of some records of the case furthermore furnished respondent the occasion to include in the records of the case (as submitted by him to the Investigator) a purported Amended Complaint^[10] allegedly executed and sworn to before him by police chief Estrella on the same date as the original criminal complaint (which would introduce the element of estafa by alleging that complainant borrowed the sum of P1,500.00 from the Mendozas on the promise to buy on their behalf some ornamental lamps but that she defrauded them, neither buying the lamps nor returning the money) and another set of purported notes of preliminary examination^[11] based on the Amended Complaint which respondent allegedly conducted within 30 minutes of the examination conducted by him as per the original notes of preliminary examination,^[12] *supra*, (which would apparently justify his finding of probable cause and issuance of the warrant of arrest) — but both documents were found by the Investigator to be spurious. From an examination of the record and the evidence, the Court finds in order the Investigator's findings and conclusion, as follows:

"Indeed, the alleged amendment (Exh. 2) and the Notes of the Preliminary Examination (Exhs. 1, 1-a, 1-B, 1-c and 1-d) if admitted as genuine and authentic part of the records of Crim. Case 1602 would find the charges of the complainant herein entirely baseless. But, as indicated in pages 17-18 herein, even only a superficial

examination of the appearance and condition of these documents, the manner it was probably treated and dirtied, the alleged signature of Chief of Police Juan P. Estrella, as well as the absence of 'staple-holes on the top and sides of these documents' which are present in the admitted genuine and authentic records of said Crim. Case 1602, would lead us to the inescapable conclusion that these Exhibits (1, 1-a, 1-b, 1-c, 1-d and 2) are definitely not genuine and authentic parts of the records of Crim. Case No. 1602.

"It is conceivable that two preliminary examinations of a criminal case could take place within the space of 30 minutes after the first one was taken.

"Painful as it may be, we feel duty bound to conclude and so find that respondent acted whimsically, and capriciously in giving due course to the estafa complaint (Exh. 1-D), and issuing the warrant for the arrest of Avelina N. Serafin, complainant herein, especially considering that later on Sept. 30, 1971, said respondent found that the Motion to Quash filed by counsel for the accused was 'Meritorious and well taken the same is granted' and consequently the case was dismissed,"[13]

In the Court's view, such a crass attempt at exculpation and cover-up by the submission of spurious evidence as supposed records of the criminal case is more reprehensible than his guilt under the charge and shows his unworthiness for the office.

A word as to then police chief Juan P. Estrella. The Court has examined the two complaints allegedly executed by him as of the same date, July 21, 1971 and fully concurs with the Investigator's observation that a comparison of Estrella's alleged signature on the purported Amended Complaint with his admittedly genuine signature on the original complaint (Exh. A and D)[14] would show that the former alleged signature is "NOT GENUINE." [15] Respondent never presented Estrella at the investigation to testify as to the authenticity of his alleged signature or the alleged second preliminary examination based on the purported Amended Complaint. In respondent's memorandum submitted to this Court on November 11, 1974, there is, however, submitted as Annex "A" a photocopy of an affidavit purportedly executed on September 30, 1974 by Estrella attesting to his having executed an Amended Complaint and as to the genuineness of his signature thereon, notwithstanding the evident dissimilarity and disparity thereof, to the naked eye, with his admittedly genuine signature on the original complaint. This matter shall be referred to the National Bureau of Investigation for the determination of the genuineness of said signature on the purported Amended Complaint, as now belatedly claimed by Estrella in his affidavit and contrary to the Investigator's finding, which claim if determined to be untrue, would warrant his criminal prosecution.

This referral, however, can in no way affect the disposition of the case at bar. Such belated affidavit of Estrella can not be admitted at this stage. Nevertheless, assuming that there were such a purported amended complaint and a second preliminary examination conducted by respondent on the basis thereof, still a judge of discernment and circumspection would have been wary of such a second sworn complaint on the very same day totally contradictory of the first complaint which referred to a plain indebtedness and was manifestly oblivious of the sacredness of an oath and intended to make out a case of instant estafa regardless of the true facts, as recited by the alleged offended parties in their original sworn statements and demand letter for payment.

Even prescinding from the aggravation of the cover-up, the Court finds that the penalty of dismissal is called for, in line with the precedents and standards set by it.

In the analogous case of *Carreon vs. Flores*, [16] the Court ordered therein respondent municipal judge's separation from the service for having rendered a verdict of conviction against therein complainant for alleged theft of about a cavan of palay which could in no way be factually or legally justified, in that the essential elements of unlawful taking and that the property stolen belonged to another were lacking.

As stressed therein by the Court citing other precedents, "(A) judge who disregards deliberately or is ignorant of the basic fundamentals of law and justice is unfit to continue in office. Respondent's separation from the service is thus called for, in line with the Court's action in *Tadiar vs. Caces*[17] (dismissing therein respondent judge for dereliction of duty in resolving a motion to dismiss a criminal case only after 18 months and failing to file the same and serve a copy thereof on the prosecution) and in *Municipal Council of Casiguran Quezon vs. Morales*[18] (dismissing therein respondent judge for unjustified absences from his station and being 'unmindful of the exigencies of the public service and neglectful of his duties to the prejudice of the residents of Casiguran'),"

ACCORDINGLY, respondent is hereby dismissed from the office of municipal judge of Guiguinto, Bulacan.

The Clerk of Court is directed to endorse to the Chief, National Bureau of Investigation, the original complaint and purported amended complaint both allegedly executed by former Guiguinto chief of police Juan P. Estrella as per his affidavit submitted with respondent's memorandum of November 11, 1974 as well as other pertinent documents and exhibits for comparison and determination of the genuineness of said signatures and for the filing of the proper criminal prosecution should the findings of the National Bureau of Investigation so warrant.

SO ORDERED.

Castro, Acting C.J., Fernando, Makasiar, Antonio, Muñoz Palma, Aquino, and Martin, JJ., concur.

Barredo, J., did not take part.

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

Makalintal, C.J. and Esguerra, J., are on official leave.

[1] Article X, sections 6 and 7.

[2] The Investigating Judge needlessly reproduced in the first 15 pages under "record of proceedings held" the texts of numerous orders issued by him in the course of his investigation.

[3] Exh. D, Record, p. 133; emphasis supplied.

[4] Exhs. D-1 and A-3, Record, pp. 134 and 148-a, respectively.

[5] Exh. D-2, Record, p. 135.

[6] The correct citation is Republic Act 296, as amended, sec. 87. Text thereof is reproduced elsewhere in the decision.

[7] Fn. 5; the exact text in Pilipino reads:

"Tanong: Mirfa ng kunin and iyong per a at hanggang ngayong ay Hindi nagbabayad si Mrs. Avelina N. Serafin sa inyo?

Sagot: Hindi nga pa, kting kaya ako O kami nagsusumbong upang maparusahan siya. "

[8] Complaint, Record, p. 6.

[9] Exhibit 7. Record, p. 163-a.

- [10] Exh. 2. Record, p. 151-a.
- [11] Exh. 1. Record, pp. 152-a to 154-a.
- [12] Exh. D-2. Record, p. 135.
- [13] Investigator's Report, p. 32; italics supplied.
- [14] Record, pp. 122-a and 133.
- [15] Investigator's Report, p. 32.
- [16] Adm. Case No. I 1 1-MJ, May 30. 1975.
- [17] 60 SCRA 215 (Oct. 21. 1974) per Aquino. J,
- [18] 61 SCRA 14 (Nov. 13. 1974) per Hsguerra. J,

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