

JOSE MARIA ANTONIO FERNANDEZ, COMPLAINANT, VS. JUDGE JULIO PRESBITERO, MUNICIPAL JUDGE OF PULUPANDAN, NEGROS OCCIDENTAL, RESPONDENT.

A.M. No. 486-MJ. September 13, 1977

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Administrative case against a municipal judge for grave misconduct, partiality, and oppression, for having conducted the preliminary examination of a criminal case at night, and at the private residence of a relative of the political opponent of the herein complainant's father, about three (3) to four (4) kilometers from the town hall; thereafter issuing the warrant for the arrest of the complainant, knowing that the next and succeeding days are religious and public holidays when government and other offices are closed, thus precluding the seasonal filing of a bail bond; and recommending the criminal prosecution of complainant's father who is not a party to the criminal case and had no opportunity to cross-examine the witnesses.

The case was referred to the Executive Judge of the Court of First Instance of the province, for investigation, report and recommendation,[1] who, after a proper hearing, found the respondent judge guilty of partiality and recommended the suspension of the respondent judge from office for a period of two (2) months, without pay.[2]

The Judicial Consultant, however, recommends the imposition of a lesser penalty of reprimand, for the reason that respondent judge acted in good faith.[3]

The facts of the case are not disputed. It appears that a stabbing incident, involving herein complainant, Jose Maria Antonio Fernandez, son of the incumbent Municipal Mayor Joaquin O. Fernandez, and one Francisco Bescaser, took place at Veraguth St., Pulupandan, Negros Occidental, at about 9:00 o'clock in the evening of April 16, 1973. The next day, April 17, 1973, agents of the PC Criminal Investigation Service (CIS) investigated herein complainant Fernandez, after which complainant was sent home. Complainant, however, was directed not to leave his house.

On the following day, April 18, 1973, Holy Wednesday, the CIS agents, together with Francisco Bescaser and the latter's witnesses, went to the Municipal Court of Pulupandan to file a complaint for attempted murder against the herein complainant Fernandez. The respondent, Judge Julio V. Presbitero of the Municipal Court of Pulupandan, Negros Occidental, was not in his office as, according to a clerk in the office of the Municipal Court, the respondent judge was then hearing a case in the Municipal Court of Murcia, Negros Occidental. At the suggestion of one Sgt. Yap, the group proceeded to the house of one Mario Pena, a relative of the political opponent of complainant's father, at Barrio Ubay, Pulupandan, about three (3) to four (4) kilometers from the town hall of Pulupandan. At about 5:45 o'clock that afternoon, the CIS team sent a man to fetch the respondent judge from his house at Barrio Palaka, Valladolid, Negros Occidental, and take him to the house of Mario Pena at Barrio Ubay because they were filing a case with the Municipal Court of Pulupandan.

The respondent judge arrived at the house of Mario Pena at about 6:30 o'clock that evening, together with his clerk, Miss Elsie P. Java, bringing with him the Criminal Docket and Seal of the Municipal Court of Pulupandan.[4] Upon arrival, the respondent judge was presented with a copy of the criminal complaint and the

affidavits of witnesses. Despite the fact that these affidavits.[5] have been previously subscribed and sworn to before Asst. Provincial Fiscal Othello Amunategui, the respondent judge, with the help of his clerk, personally took anew the sworn statements of Francisco Bescaser and his witnesses.[6]The complaint was thereafter entered in the Docket as Crim. Case No. 1046, following which the respondent judge issued a warrant for the arrest of the complainant and fixing the bail bond for his temporary release at PI 5,000.00. By virtue of the warrant, the herein complainant was arrested by CIS agents on April 19, Maundy Thursday of the Holy Week, and detained at the PC Stockade at Bacolod City.

After the preliminary investigation of the case, a motion to dismiss the case was filed, which motion was duly opposed by the prosecution. In his Order, dated July 9, 1973,[7] denying the said motion to dismiss the case, the respondent judge, relying upon the testimony of Francisco Bescaser implicating Mayor Joaquin Fernandez in the killing of one Yanson, strongly recommended the investigation of said killing by investigative agencies of the government, furnishing the Chief Justice, the Secretary of National Defense, the Secretary of Justice, and the Executive Secretary with a copy of said order.

The respondent judge testifies his actions, saying that he wanted to conduct the preliminary examination of the criminal case against Fernandez in the courtroom during regular office hours and had told the CIS agents of his desire, but relented when he recalled that there were no lights in the courtroom, and found soundness in the argument of the CIS agents of the urgency of the need for the warrant of arrest to be issued that night in order to discontinue the harassment of the witnesses by the Mayor of Pulupandan.

This contention may be valid if the criminal case was filed against the Mayor of Pulupandan for then the harassment of witnesses may cease upon his arrest. The criminal case, however, is against the son of the mayor, whose arrest may not prevent the mayor from harassing the witnesses.

The respondent's act of vehemently recommending the investigation of the circumstances surrounding the death of one Yanson, contained in the order of July 9, 1973, may also be considered an indication of respondent's partiality. His testimony before the Investigator in this regard, is most revealing. He declared as follows:

"BY THE COURT

Q.

Judge Presbitero, why is it in your order denying the motion to dismiss by the accused Jose Maria Antonio Fernandez in Crim. Case No. 1046 which you issued on July 9, 1973, you have alluded to the municipal mayor of Pulupandan who was not the accused in that Crim. Case No. 1046?

A.

Because in the motion. Your Honor, the integrity of the trying judge, Your Honor, was mentioned. So I have to answer those points, Your Honor, in the motion filed by Atty. Benito.

Q.

Why did you include that? A. But, Your Honor, I have to. Q. That shows that you have an axe to gripe against the mayor?

A.

But, Your Honor, precisely in that motion there was an allusion to the presiding judge as being antagonistic. I have to defend myself.

Q.

But not in that kind of complaint?

A.

I was attacked, Your Honor, by the lawyer in his motion to dismiss. Naturally, I have to defend myself.

Q.

Yes, you could have cited that lawyer but not in your order?

A. Because these points were raised."^[8]

At any rate, it "has always been stressed that judges should not only be impartial but should also appear impartial. For 'impartiality is not a technical conception. It is a state of mind' and, consequently, the 'appearance of impartiality is an essential manifestation of its reality.' It must be obvious, therefore, that while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave in such a manner that the parties before them should have confidence in their impartiality."^[9]

Here, the actuations of the respondent judge, in holding the preliminary examination of the criminal case in the residence of a relative of a political opponent of the father of the accused, about three (3) to four (4) kilometers from the courthouse, at night, cannot but lead to a suspicion of partiality. The respondent judge should have exercised due prudence in the discharge of his official duties.

WHEREFORE, judgment is hereby rendered ordering the respondent, Judge Julio V. Presbitero of the Municipal Court of Pulpandan, Negros Occidental, to pay a fine equivalent to his salary for two (2) months.

SO ORDERED.

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

[1] Rollo, p. 63.

[2] Id., p. 138.

[3] Id., p. 218.

[4] Id., pp. 180-181. 206.

[5] Id., pp. 128-132.

[6] Id., pp. 133-134.

[7] Id., p. 10.

[8] Id., p. 212.

[9] Tan, Jr., et al., vs. Judge Gatlarido, L-41213-14. Oct. 5, 1976. 76 SCRA 306. 315.

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