

EMILIO EVANGELISTA, COMPLAINANT, VS. JUDGE LUCAS D. CARPIO, CIRCUIT CRIMINAL COURT, 16TH JUDICIAL DISTRICT, DAVAO CITY, PHILIPPINES, RESPONDENT.

A.M. No. 548-CCC. November 21, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Administrative complaint against Judge Lucas D. Carpio of the Circuit Criminal Court, Sixteenth Judicial District, Davao City, for ineptitude, gross ignorance of the law and violation of his oath of office and bias and gratitude.

The complaint was referred to respondent for comment and after said comment was filed, Justice Venicio Escolin of the Court of Appeals was designated to conduct an investigation and make his report and recommendation. Hereunder is the report of the Honorable Investigator:

"Emilio Evangelista, a resident of General Santos City, filed before the Supreme Court a formal complaint dated November 9, 1973. Charging Honorable Lucas D. Carpio, presiding Judge of the Circuit Criminal Court, Sixteenth Judicial District Davao City, with (1) "ineptitude"; (2) "gross ignorance of the law and violation of his oath of office"; and (3) "bias and gratitude". The complaint was referred to the undersigned for investigation, report and recommendation.

"The pertinent facts, chronologically stated, are as follows —

"Sometime before January 22, 1968, complainant filed with the office of the Mayor of General Santos an application for renewal of permit to operate a cockpit for the year 1968. Due to Mayor Acharon's refusal to give due course to said application, complainant filed a petition for mandamus with the Court of First Instance of South Cotabato, then presided by Judge Pedro Samson C. Animas, which petition the court granted in its order dated April 4, 1968, the dispositive portion of which reads:

"WHEREFORE, let a writ of mandamus issue commanding the respondent Mayor Antonio Acharon of General Santos, South Cotabato, to accept and give due course to the application of Emilio Evangelista for a permit to operate a cockpit at Labangal, General Santos, South Cotabato (p. 5, Respondent's Comment).

"Pursuant to said order, Mayor Acharon endorsed the application to the Chief of Police, the City Health Officer,

the City Treasurer and the Bureau of Internal Revenue, for 'verification, examination and recommendation.' On November 6, 1968, the application was returned to the City Mayor, who refused to issue the corresponding permit. On November 25, 1968, complainant filed a petition to declare Mayor Acharon in contempt of court, which Judge Animas dismissed in an order dated January 23, 1969, the pertinent portion of which reads:

'It is contended by the petitioner that he has fully complied with all the requirements provided for by Ordinance No. 5-a of the Municipal Council of the Municipality of General Santos, South Cotabato, which ordinance, under Section 100 of Republic Act 5412, creating the City of General Santos, was (hen in full force and effect until repealed, modified or superseded by the City Council by ordinance and that being so, the issuance of the permit to the petitioner becomes a ministerial duty on the part of the Mayor and his refusal constituted a contumacious act violative of the order of this Court already alluded to.

'After a serious re-examination of the records of this case, having in mind the dispositive part of the judgment in question and the documentary evidence attached thereto for which the parties submitted this petition for contempt for resolution we believe that the contention of the petitioner is not well taken for the following reasons:

'First, the order issued by the Court was simply commanding the respondent City Mayor to accept and give due course to the application of Emilio Evangelista to operate a cockpit at Labangal, General Santos, South Cotabato. This application was returned to him, apparently there was a certain requisite which the petitioner has not complied with, that was, the issuance of a police clearance as can be easily perused from Exhibit 'A'. Said police clearance could not have been issued because pending in the City Court of General Santos is Criminal Case No. 3472 for Estafa with the herein petitioner as accused and filed at the instance of the officers and stockholders of the cockpit in question, as may be gleaned from the affidavits thereunto attached (Record, pp. 73-79; Annexes 3-A, 3-B, 3-C, 3-D and 3-E):

'Second, the dispositive part of the judgment in question did not command the Mayor to grant a permit to the petitioner, hence, it could not be said that the refusal by the Mayor to grant the permit after indorsing this application to the different offices violated the order of this Court;

'Third, at the time when the matter was submitted for resolution by this Court, the permit sought to be applied has already expired as the permit for the year 1968 is good for only one year, expiring on December 31, 1968. In short, the question before us now has become moot and academic. This must necessarily be so specially considering that while damages were prayed for by the petitioner in his petition, the Court refused to award the same.

'Fourth, the City Mayor being now sought to be compelled to issue the permit to the petitioner has powers and duties specifically and expressly provided by law. Being now compelled to act not as a municipal mayor of the Municipality of General Santos but as a City Mayor of General Santos City created by Republic Act 5412, an examination should be made of his powers and authority under said law. One of such powers and duties is:

'To grant or refuse municipal licenses or permits of ail classes and to revoke the same for violations of the conditions upon which they were granted, or if acts, prohibited by law or city ordinance are being committed under the protection of such licenses or in the premises in which the business for which the same has been granted is carried on, or for any other good reason of general interest.' (Sec. 10, Par. (L), Rep. Act 5412, otherwise known as the Charter of General Santos City; Italics supplied.)

'One need not stretch his imagination from said provision, the power of the Mayor to grant or refuse licenses or permits of all classes and to revoke the same is not a ministerial duty hut it is a discretionary one to be exercised by him 'for any good reason of general interest.' Any claim, therefore, that under the ordinance of the Municipality of General Santos that the duty to issue the permit is purely ministerial function and that the City mayor merely acts as an automation, is denied by the foregoing provision of the City Charter.

'ACCORDINGLY, finding the petition to declare the respondent in contempt to be not well taken, the same is hereby ordered DISMISSED. (pp. 5-7. Comment).

"It appears that during the pendency of complainant's application. Mayor Acharon issued a permit to his uncle, Luis Acharon, to operate the cockpit applied for by the complainant. In May 1971, the City Fiscal of General Santos, at the instance of complainant, filed an information (Annex A of the complaint) charging Mayor Acharon with violation of paragraphs (c) and (0, Sec. 3, Rep. Act No. 3019 (The Anti-Graft and Other Corrupt Practices Act) docketed as Criminal Case No. 255 of South Cotabato Court of First Instance. Upon his arraignment on October 28, 1971, Mayor Acharon pleaded not guilty to the information.

"Another case, Criminal Case No. 256 of the same Court, was filed against Mayor Acharon and Vice Mayor Rosalinda N. Bernabe for Violation of Sec. 3, Rep. Act 3019, in relation to Section 1 thereof. However, the record does not show when this case was filed and whether the accused therein were arraigned.

"On June 16, 1971, the City Fiscal filed a motion for suspension from office of the accused mayor and vice-mayor. Before Judge Animas could act on the petition, the accused filed a certiorari petition with the Supreme Court (L-33764-65) to annul the preliminary investigation conducted in aforementioned criminal cases on the ground that no prima facie case exists. The Supreme Court denied the petition.

"During the pendency of the certiorari proceedings, Judge Animas inhibited himself from trying the said cases, hence, the transfer thereof to the Circuit Criminal Court, 16th Judicial District, where they were docketed as Criminal Cases Nos. CCC-XVI-I-GSC (255) and CCC XVI-2-GSC(256).

"Soon after respondent was appointed Judge'of the said Circuit Criminal Court and specifically ordered to proceed to General Santos City to try and terminate the celebrated Octopus Murder case. Upon arrival of respondent in General Santos City on October 8, 1972, he caused the issuance of notices of hearing of Criminal Cases Nos.

CCC XVI-1 -GSC (255) and CCC XV1-2-GSC for October 13, 1972. At said hearing, District State Prosecutor A. L. Matondo, Jr. orally moved for postponement of the arraignment on the ground that the accused had filed with his office a motion for reinvestigation and that the same was still under study. Forthwith, respondent Judge granted the motion in this wise:

'When these cases were called for arraignment today, the Acting District State Prosecutor manifested that a petition for reinvestigation was filed by counsel for accused Antonio Acharon which petition according to him is still being studied by his Office for the purpose of determining whether or not the same should be granted — hence, he is asking that the arraignment of both accused be postponed to the next calendar of the Court. As prosecutor he is duty-bound to do so if he believes there is necessity therefor.

'As prayed for, the arraignment of both accused in the above-entitled cases which, by the way, has been delayed for almost two years to this date, is postponed for further assignment and the District State Prosecutor is hereby ordered to further study, and to report on his findings within 15 days from today. The prosecutor is reminded that this court desires to terminate these old cases on or before December 31, 1972, if humanly possible' (Annex D, complaint).

"The record discloses that thereafter complainant filed a complaint with the Department of Justice seeking to stop Acting State Prosecutor A. L. Marondo, Jr. from proceeding with the reinvestigation.

"On May 28, 1973, complainant filed a motion in Crim. Case No. CCC XVI-1-GSC (255) to inhibit respondent Judge from trying the case. The motion was denied.

"On September 10, 1973, complainant filed a motion for suspension of Mayor Acharon from office pursuant to the provisions of Section 13 of Rep. Act 3019. This motion has remained unacted upon by respondent until the present time. Finally, on April 22, 1974, complainant filed the present administrative complaint against respondent Judge.

"1. INEPTITUDE —

"Complainant charges respondent with ineptitude for issuing the order dated October 13, 1972, in Criminal Cases Nos. CCC XVI-1 -GSC (255) and CCC XV1-2-GSC (256), postponing the arraignment of the accused and ordering the Acting State Prosecutor to reinvestigate and study further said criminal cases, considering that the accused had already been arraigned on August 28, 1971 in Criminal Case No. XVM-GSC(255).

"The charge cannot be sustained. While the certificate of arraignment (Annex 'B' of the complaint) discloses that the accused in Crim. Case No. CCC XV1-1-GSC (255) had pleaded not guilty on August, 28, 1972, there is nothing in the record to show that he was ever arraigned in the other criminal case. It should be recalled that respondent issued the questioned order upon motion of the State Prosecutor to postpone the 'arraignment in both cases.' True, respondent committed the mistake of postponing the arraignment in both cases, because the accused had already entered his plea in Crim. Case No. CCC XVI-1 -GSC (255). However, the mistake is attributable to inadvertence or oversight, not 'ineptitude', as charged by the complainant. It is clearly an innocuous and harmless error which has not caused prejudice to complainant and, certainly, does not warrant the charge of ineptitude. The crux of respondent's order of October 13, 1972 is the directive to the State Prosecutor to restudy and reinvestigate the cases, and the thrust of the order is in no wise altered by the postponement of the proceedings,

"2. GROSS IGNORANCE OF LAW AND VIOLATION OF HIS OATH OF OFFICE.

"The charge stems from the following acts or omissions of respondent Judge:

- (1) The issuance of the order of October 13, 1972, directing the State Prosecutor to restudy and reinvestigate the aforestated criminal cases;
- (2) His failure to resolve the motion to suspend the accused from office; and
- (3) His refusal to inhibit from hearing said cases.

"We cannot agree with the complainant's view that respondent was grossly ignorant of the law and that he violated his oath of office in ordering the reinvestigation of the cases in question. It is a settled rule that the trial court has the discretion to direct the fiscal to conduct a reinvestigation of a case already filed if there are good reasons justifying such reinvestigation.

'It is already a settled rule in this jurisdiction that the court may, in its sound discretion, order the reinvestigation of cases, for the Supreme Court has held: 'We cannot over-emphasize the necessity of close scrutiny and investigation of prosecuting officers of all cases handled by them, but whilst this court is adverse to any form of vacillation by such officers in the prosecution of public offenses, it is unquestionable that they may in appropriate cases, in order to do justice and avoid injustice, reinvestigate cases in which they have already filed the corresponding information,' (Francisco's Criminal Procedure, 1963 ed., p. 277: Suarez vs. Platon, 69 Phil. 556).

'Reinvestigation by the fiscal is not part of the due process of law. it is simply discretionary with the court,'

(Francisco's Criminal Procedure, 1963 ed., p, 278; People vs. Andacan, CA-G.R.No.3732-R).

'Hence, when respondent Judge granted respondent Castillo's petition for reinvestigation, without objection on the part of the fiscal, respondent Judge and fiscal did not act illegally, much less with grave abuse of discretion upon which a writ of certiorari may issue.' (Hiliganga vs. Flares, CA-G.R. No. 37199-R, March 29, 1966).

"In the light of existing jurisprudence on the matter, it is a conclusion easily reached that respondent Judge, in full accord with the reasons advanced by the State Prosecutor in seeking the reinvestigation of the said cases (pp. 9-10, 11-13, respondent's comment) and with the ruling of Judge Animas (heretofore quoted) in the mandamus case denying complainant's motion to declare Mayor Acharon in contempt for refusing to issue him the cockpit permit applied for, was fully justified in ordering a reinvestigation of the criminal cases involved.

"Complainant further questions respondent's refusal to disqualify himself from hearing the said criminal cases. As heretofore stated, he filed a motion to disqualify respondent based on the following grounds:

'That the undersigned received information from a very reliable source, and this is now of public knowledge, that your Honor allegedly received favors from the accused, such as the alleged appointments of two city policemen, one female clerk in the City Treasurer's office, who happens to be allegedly your Honor's niece and the promotion of Angel Daprosa as City Assessor, all your Honor's alleged proteges:

'That a very reliable source also informed the undersigned, and same is also of public knowledge now. that on one occasion, your Honor allegedly accompanied Provincial Fiscal Gregorio Daprosa. whose wife is allegedly related by consanguinity to your Honor, father of Angel Daprosa, to the residence of Atty. Romerico Veneer counsel for the accused, met the accused thereat, and allegedly exerted pressure on the accused to promote Angel Daprosa to the position of City Assessor, which the accused willing acceded.' (Annex G, Complaint).

"Note that respondent is not legally disqualified within the terms of Section 1, Rule 137, Rules of Court. While under the second paragraph of the same section, a judge may voluntarily disqualify himself 'for just or valid reasons,' those advanced in the complainant's motion for inhibition fall far short of that test, in point of fact, at the hearing of his motion, complainant admitted that some of the allegations (herein were false, while the others came to his knowledge from unknown and unidentified persons. Thus, respondent denied the motion for disqualification in this tenor:

'Without prejudice to the making of an extended written order later, the Court after examining the movant in

open court who admitted that some of his allegations are false and the others only heard by him from unknown and unidentified persons, hereby denies the motion for inhibition for lack of merit.

'As the Court is made to understand that, if his motion is denied, movant wants to raise the matter in the Supreme Court, the Court generously gives him thirty (30) days from notice to file whatever action he may want to file in the Supreme Court, and, if within that time the Supreme Court does not order this Court to desist from further action on the case, the case will thereafter be set for hearing until terminated' (Annex H, Complaint).

"Apart from the absence of any evidence to establish the truth of the averments set forth in the motion for inhibition, we take cognizance of respondent's denial of the truth thereof. For lack of evidence to substantiate the charge, the same cannot be entertained.

"3. BIAS--

"Under the charge of bias, complainant alleges that respondent obtained favors from accused Mayor Acharon, viz: that respondent allegedly secured the appointments of two policemen. Carlito Alicarte and Cornelio Quetulio, Jr., to the General Santos Police Force; the appointment of one clerk to the General Santos City Treasurer's Office, 'imported¹ from Paoay, Ilocos Norte, the respondent's home town; and the promotion of Angel Daprosa to the position of City Assessor, son of Provincial Fiscal Gregorio Daprosa of South Cotabato, whose wife is allegedly related to the respondent by consanguinity.

"There is not an iota of evidence to show that respondent recommended Carlito Alicarte and Cornelio Quetulio to the position of policemen of the General Santos Police Force or any townmate of his to the position of clerk to the General Santos City Treasurer's Office, or that he recommended the promotion of Angel Daprosa to the position of City Assessor.

"As to the alleged relationships of respondent's wife to Angel Daprosa, the testimony of Guan Guab, the sole witness for the complainant is pure hearsay, hence, without any probative weight whatsoever.

"WITNESS:

According to the Information I received is that the mother of Angel Daprosa is allegedly related to the respondent, (p. 7,t.s.n.).

Q. Do you know that he is a nephew of the clerk so you believe that we are only related to the mother of Pat. Daprosa, no, Assessor Daprosa. From whom did you hear that?

A. From other persons. That's why I said alleged." (p. 18. t.s.n.).

"Finally, complainant claims that respondent manifested bias in meting out to Wilfredo Quintanilla, the confessed gun slayer of Adan de las Marias in Criminal Case No. CCC XV1-3-GSC (2121), the much publicized Octopus Murder case, the light sentence of six months of *arresto mayor* as minimum to one (1) year, one month and ten (10) days of *prision correccional*, as maximum, it is alleged that respondent failed to take into consideration the following circumstances:

'1. that the pistolized carbine used was never surrendered;

'2. that the accused had no authority or license to carry said firearm; and

'3. that he brought that gun to a nightclub where the crime was committed proving premeditation."

"This charge could well be disregarded, considering that complainant is not an interested party in that case.

"At any rate, complainant has not adduced any evidence in support of his theme. Respondent found that the accused therein had acted in incomplete defense of a stranger. Absent any showing to the contrary, the penalty thus imposed should be presumed to be in accordance with substantial evidence and the applicable law. Moreover, even assuming that in that case respondent Judge made findings of fact not supported by the evidence, the fact stands that no proof has been presented in this administrative case to show that such actuation emanated from an intention to violate the law or was in disregard of well-known principles of law. Besides, the error thus imputed on respondent Judge amounted only to an error of judgment that would not suffice to constitute impeachable misconduct (In re Impeachment of Horilleno, 43 Phil, 212; *Superable vs Honorable Escalona*, 24 SCRA 545).

"IN VIEW OF ALL THE FOREGOING, dismissal of the charges is hereby recommended."

We have carefully reviewed the record in the light of the above report and We are satisfied that the conclusions and recommendation therein are amply supported by the evidence and the law.

WHEREFORE, the instant administrative complaint is dismissed.

Castro, C.J., Makasiar, Antonio, Muñoz Palma, Aquino, Concepcion Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Teehankee, J., concurs in the result.

Fernando, J., took no part.

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