

WARLITO ALISANGCO, COMPLAINANT, VS. JUDGE JOSE C. TABILIRAN, JR., MUNICIPAL CIRCUIT TRIAL COURT, MANUKAN-JOSE DALMAN, ZAMBOANGA DEL NORTE, RESPONDENT.

Adm. Matter No. MTJ-91-554. June 30, 1993

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PER CURIAM:

In a sworn letter-complaint dated 9 May 1991 and addressed to the Chief Justice, the complainant, Warlito Alisangco, charges respondent Judge Jose C. Tabiliran, Jr. of the Municipal Circuit Trial Court (MCTC) of Manukan-Jose Dalman, Zamboanga del Norte, with grave abuse of authority, ignorance of the law and conduct unbecoming of a Presiding Judge. Complainant avers therein that after the Station Commander of Jose Dalman, Zamboanga del Norte had filed an Amended Complaint in Criminal Case No. 147 (for the violation of Presidential Decree [P.D.] No. 533) which included him as one of the accused, the respondent Judge -- in whose sala the case was pending -- immediately issued a warrant for the complainant's arrest without first determining his participation in the offense charged, and set the bond at P20,000.00. The latter claims that the said bond was excessive considering that the value of the carabao involved in the case is only P7,000.00. The complainant then recounts that he subsequently posted his cash bond with the Regional Trial Court (RTC) of Dipolog City, after which he was served with a subpoena issued by the respondent court directing him to appear in the morning of 21 February 1991 for arraignment and preliminary investigation. The complainant no longer appeared on 21 February 1991 because he had earlier filed a waiver of his right to a preliminary investigation on 20 February 1991. In view of his non-appearance, the respondent Judge issued an order directing the Station Commander of Jose Dalman to arrest the complainant and requiring the latter to show cause why his bond should not be confiscated. Before a policeman could effect the arrest of the complainant in Dipolog City, the latter's counsel intervened by filing a motion to lift the order of arrest. The respondent Judge, however, has not acted on the said motion.

On 12 December 1991, we required the respondent to comment on the letter-complaint.

In his Comment dated 30 January 1992, the respondent Judge denies the imputed charges and alleges that:

- (a) The filing of the amended complaint was well within the ambit of Section 14, Rule 110 of the 1985 Rules on Criminal Procedure and the preliminary investigation was properly conducted prior to the issuance of the warrant of arrest; he examined the complainant himself and the witnesses for the offended party; as a matter of fact, the complainant readily admitted to being the financier of Rodolfo Obelle in buying carabaos; having bought a stolen carabao, the complainant would be liable under Section 2(a) of P.D. No. 1612 (which the respondent Judge erroneously claims to be the Anti-Cattle Rustling Law of 1979 when in reality, it is the Anti-Fencing Law of 1979).
- (b) The bond he recommended was not excessive since the penalty prescribed in P.D. No. 533 is prison mayor maximum to reclusion temporal minimum.
- (c) The waiver of preliminary investigation was neither filed in the MCTC of Manukan on 20 February 1991 nor shown to him during the hearing on 21 February 1991 at the Jose Dalman court. It is unlikely that the same

was filed before the Manukan court; in all probability, the said waiver was filed in the residence of the respondent Judge's Clerk of Court, Maria Blyth Abadilla, the complainant's neighbor and relative, at Sicayab, Dipolog City. Granting, however, that it was indeed filed in Manukan, it could not have been handed to him for consideration on 21 February 1991 at the Jose Dalman court because he did not hold court in Manukan on the said date. Moreover, the MCTC at Manukan was the wrong place to file the waiver because the complainant was charged before the MCTC of Jose Dalman; thus, the waiver should have been filed in the latter court.

(d) He is a victim of a frame-up planned by the complainant's relative, Clerk of Court Maria Blyth Abadilla. The latter is not in good terms with him, as a matter of fact, he had filed a case against her, docketed as Adm. Matter No. P-91-597, for gross abuse of authority, intolerable insubordination and misconduct.

in compliance with this Court's Resolution of 17 March 1992, the complainant filed his reply to the comment on 18 June 1992.

In our Resolution of 12 November 1992, we referred the case to Executive Judge Jesus O. Angeles of Branch 7, RTC of Dipolog City for investigation of the factual issue involved, namely, whether the complainant had filed his waiver before 21 February 1991, as well as other issues raised therein. Judge Angeles was directed to submit his report and recommendation thereon within thirty (30) days from receipt of the records of the case.

Executive Judge Angeles subsequently complied with our order by submitting a report dated 22 February 1993 to Deputy Court Administrator Juanito A. Bernad. It reads:

"In compliance with the Resolution of the Honorable Supreme Court, I investigated two personnel of the Municipal Circuit Trial Court of Manukan-Jose Dalman who attended the preliminary investigation of the case of Warlito Alisangco in Criminal Case No. 147, namely: Court Interpreter Bernard A. Letran, and Court Stenographer Vivencia A. Retes, whose declarations established the following facts:

1. MCTC Clerk of Court Ma. Blyth B. Abadilla reported to office on February 20, 1991 until 5:00 pm., which disproves the assertion of MCTC Judge Jose C. Tabiliran, Jr. that Alisangco's written waiver to preliminary investigation was not given to Abadilla in Court but in her house in Sicayab, Dipolog City which is about 39 kilometers from her station in Manukan;
2. Although Mrs. Retes cannot anymore recall the person who filed the waiver, but (sic) she knew for a fact that somebody delivered to Mrs. Abadilla in her office on February 21, 1991, a document which Abadilla said was a waiver;
3. Both Court personnel did not actually see the document, even during the preliminary investigation held in Jose Dalman on the following day, February 21. They had no way of knowing whether the waiver was attached to the records of the case, as the latter was already in the possession of Judge Tabiliran;
4. Considering that both Judge Tabiliran and Abadilla did not mention of any case involving preliminary (sic) investigation calendared on February 20 or 21 other than Criminal Case No. 147 against Alisangco and some others, the waiver filed on February 20 must refer to no other but to the case of Alisangco which was received by Clerk of Court Abadilla in her office in the afternoon of February 20, 1991.

I wanted to investigate the person who filed the waiver of Alisangco, as the latter was not the one who personally brought the document to the Court, but there is no way, after exerting efforts, of knowing for sure who that person was. Alisangco did not identify him even with the declaration of Abadilla in her Affidavit that the waiver 'was personally brought and delivered by one of Alisangco's male helpers' (Annex A of Complaint's Reply, A.M. MTJ-554)."

Attached to this letter are the minutes of the investigation containing the testimonies of Mr. Bernard Letran and Mrs. Vivencia Retes.

In its Memorandum dated 11 May 1993, the Office of the Court Administrator made the following findings and conclusions:

"As previously cited (See Memo, rollo, pp. 85-86) the right to a preliminary investigation is a personal right which can be waived expressly or impliedly, as by failure to demand such right or by non-appearance at the investigation. (Nombres vs. People, L-11437, February 28, 1959; 'Concepcion vs. Chief of Police, L-2393, August 6, 1948, cited in Remedial Law Compendium (RLC) p. 246, J. Regalado).

Hence, 'since the accused can waive the right to be present at the Preliminary Investigation, he cannot be compelled to appear or be present during the same' (Cruz vs. Salva, L-12871, July 25, 1959, cited in RLC, p. 247) and 'the magistrate is not bound to proceed further with the hearing (21 AmJur 2d, p. 688). The case thus should be forwarded to the proper Regional Trial Court for the filing of the corresponding Criminal Information, as was done in Belarmino vs. Ayson (193 SCRA 647).

Respondent Judge, by ordering complainant's arrest despite the waiver made has clearly abused his discretion. His excuse of lack of knowledge of said waiver cannot be sustained as even if without such express waiver, complainant's absence despite due notice would have been sufficient to prompt him to dispense with such investigation and immediately forward the case records to the Provincial Prosecutor's Office for review and for the filing of the corresponding Information, if warranted. Bad faith, in fact, is imputed to him by the Investigating Judge in view of the circumstances showing his prior knowledge of complainant's express waiver.

Malicious intent of respondent Judge to incarcerate accused-complainant is likewise manifested by his order for his arrest despite knowing that said accused had already duly posted bail when arrested by virtue of the first warrant issued and despite the Order of release issued by RTC, Branch 10 (Dipolog City) (See tsn of February 21, 1991 hearing, rollo, p. 72)

Thus, while bail (sic) he imposed is deemed reasonable, we find respondent to have abused his discretion in ordering the arrest of the accused-complainant despite the latter's express waiver to (sic) a preliminary investigation and the filing of sufficient bail"

and recommended that since "this is respondent's first offense of this sort," he be "merely reprimanded and warned that a repetition of the same or similar offense will be dealt with more severely."

We find the findings of fact and conclusions of the Office of the Court Administrator to be in order. However, the recommended penalty is not commensurate to the offense.

There is more to this case which warrants a graver punishment.

1. Criminal Case No. 147 before the MCTC of Manukan-Jose Dalman, Zamboanga del Norte, is for the violation of P.D. No. 533, otherwise known as the Anti-Cattle Rustling Law of 1974. The lowest of the penalties prescribed therein is prision mayor in its maximum period to reclusion temporal in its medium period. The complaint in the said case was subsequently amended to implead the complainant as one of the accused. As amended, it charges that conspiracy existed among the accused, and places the value of the stolen carabao at P8,000.00.

In his comment, however, the respondent Judge states that the liability of the complainant is governed by P.D. No. 1612 -- the Anti-Fencing Law of 1979 -- which he erroneously designated as the Anti-Cattle Rustling Law of 1979. Such a conclusion is based on his claim that the complainant knowingly purchased a stolen carabao. It is clear that even if we were to follow the respondent Judge's own assessment of the evidence, the amendment of the complaint in Criminal Case No. 147 would have been improper in the first place because the said case involves a

violation of P.D. No. 533 and not P.D. No. 1612. In view thereof, respondent Judge should not have issued a warrant of arrest in Criminal Case No. 147 but should have instead required the Station Commander to file an entirely new case against the complainant for the violation of the Anti-Fencing Law (P.D. No. 1612). In this regard then, the respondent Judge acted arbitrarily. It appears that he tried to cover-up this mistake by intentionally designating P.D. No. 1612 as the Anti-Cattle Rustling Law of 1979, thus making it appear that the amendment was in order because the offense, as charged, remained the same.

At any rate, this alleged irregularity in the issuance of the warrant of arrest, as well as the allegedly excessive amount of bail recommended by the respondent Judge, has been rendered moot and academic by the complainant's filing of a cash bond in the amount fixed by the respondent.[1]

2. Considering that the MCTC of Manukan-Jose Dalman only had preliminary jurisdiction over the case, the respondent Judge did not have any authority to set the case for arraignment. All it could do was to calendar the same for preliminary investigation. There is no law or rule requiring an arraignment during the preliminary investigation. Under Section 1, Rule 116 of the Revised Rules of Court, the arraignment must be conducted by the court having jurisdiction to try the case on its merits. Thus, with respect to the case filed against the complainant, this would be the proper Regional Trial Court which has exclusive original jurisdiction over the said case by reason of the prescribed penalty.

Respondent Judge, therefore, either did not know the proper procedure on the matter or simply chose to ignore the same.

3. It was duly proven that the waiver of the preliminary investigation was filed by the complainant on 20 February 1991. Respondent Judge thus further exhibited ignorance of procedural law or plainly abused his authority when he issued a warrant for the arrest of the complainant and ordered the latter to show cause why his bond should not be confiscated. Even if we were to assume that the waiver was not seen by him because it was not attached to the expediente of the case, the most that the court could have done from the complainant's failure to appear was to consider him as having waived his right to a preliminary investigation[2] or declare such preliminary investigation closed and terminated as to him. It is settled that even if an accused had expressed his desire to be given an opportunity to be present at the preliminary investigation, but later changed his mind and renounced his right, he cannot be compelled to be present in the said investigation.[3]

WHEREFORE, for ignorance of the law and grave abuse of authority, respondent Judge is hereby sentenced to pay a fine of Five Thousand Pesos (P5,000.00), and warned that the commission of the same or similar acts would be dealt with more severely.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Padilla, J., on official leave.

[1] *People vs. Selfaison*, 1 SCRA 235 [1961]; *Doce vs. CFI*, 22 SCRA 1028 [1968]; *Luna vs. Plaza*, 26 SCRA 310 [1968]; *People vs. Lazo*, 198 SCRA 274 [1991].

[2] *Doce vs. CFI*, *supra*.

[3] *Cruz vs. Salva*, 105 Phil. 1151 [1959].

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