

**CHIEF STATE PROSECUTOR JOVENCITO R. ZUÑO, COMPLAINANT,
VS. JUDGE ALEJADRINO C. CABEBE, REGIONAL TRIAL COURT,
BRANCH 18, BATAAC, ILOCOS NORTE, RESPONDENT.**

A.M. OCA No. 03-1800-RTJ (formerly OCA IPI No. 03-1675-RTJ). November 26, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

The instant administrative case stemmed from the sworn complaint[1] dated January 15, 2003 of Chief State Prosecutor Jovencito R. Zuño of the Department of Justice, against Judge Alejandrino C. Cabebe,[2] then Presiding Judge, Regional Trial Court, Branch 18, Bataac, Ilocos Norte. The charges are knowingly rendering an unjust judgment, gross ignorance of the law and partiality.

In his complaint, Chief State Prosecutor Zuño alleged that Criminal Case No. 3950-18 for illegal possession of prohibited or regulated drugs was filed with the Regional Trial Court, Branch 18, Bataac, Ilocos Norte against Rey Daquep Arcangel, Victorino Gamet Malabed, William Roxas Villanueva, all police officers, Jocelyn Malabed Manuel and Pelagio Valencia Manuel. Upon arraignment, all the accused, assisted by their counsel de parte, pleaded not guilty to the crime charged. On March 14, 2001, the prosecution filed with this Court a petition for change of venue but was denied in a Resolution dated August 13, 2001.[3] On October 8, 2001, the accused filed a motion for reconsideration.[4] In the meantime, the proceedings before respondent's court were suspended.

On May 6, 2002, the accused filed a motion to dismiss invoking as ground the right of the accused to a speedy trial. On November 5, 2002, respondent judge *motu proprio* issued an Order[5] granting bail to the accused, fixing the bail for each at P70,000.00 in cash or property bond at P120,000.00, except for accused Evelyn Manuel whose bail was fixed at P20,000.00 in cash. Respondent judge issued the Order without the accused's application or motion for bail.

The prosecution then filed a motion for reconsideration.[6] Instead of acting thereon, respondent judge issued an order inhibiting himself from further proceeding with the case, realizing that what he did was patently irregular. Complainant thus prays that respondent judge be dismissed from the service with forfeiture of all benefits and be disbarred from the practice of law.

In his comment,[7] respondent denied the charges. While admitting that he issued the Order dated November 5, 2002 granting bail to the accused without any hearing, "the same was premised on the constitutional right of the accused to a speedy trial." There was delay in the proceedings due to complainant's frequent absences and failure of the witnesses for the prosecution to appear in court, resulting in the cancellation of the hearings. The prosecution did not object to the grant of bail to the accused.[8] He added that the administrative complaint filed against him is purely harassment. It is not the appropriate remedy to question his alleged erroneous Order. Accordingly, and considering his forty (40) years of government service, he prays that the administrative complaint be dismissed.

On March 26, 2003, respondent judge compulsorily retired.

In his Report dated July 7, 2003, Deputy Court Administrator Jose P. Perez found respondent judge liable for gross ignorance of the law and recommended that a fine of P20,000.00 be imposed upon him, with a stern warning that a repetition of the same or similar offense will be dealt with more severely.

In our Resolution[9] dated August 25, 2003, we directed that the complaint be re-docketed as a regular administrative matter and required the parties to manifest whether they are submitting the case for resolution on the basis of the pleadings filed. Both parties submitted the required manifestations that they are submitting the case for decision on the basis of the records.

In *Docena-Caspe vs. Judge Arnulfo O. Bugtas*,[10] we held that jurisprudence is replete with decisions on the procedural necessity of a hearing, whether summary or otherwise, relative to the grant of bail, especially in cases involving offenses punishable by death, reclusion perpetua, or life imprisonment, where bail is a matter of discretion. Under the present Rules, a hearing is mandatory in granting bail whether it is a matter of right or discretion.[11] It must be stressed that the grant or the denial of bail in cases where bail is a matter of discretion, hinges on the issue of whether or not the evidence of guilt of the accused is strong, and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the latter to properly exercise his discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong.[12] In fact, even in cases where there is no petition for bail, a hearing should still be held.[13]

There is no question that respondent judge granted bail to the accused without conducting a hearing, in violation of Sections 8 and 18, Rule 114 of the Revised Rules of Criminal Procedure, quoted as follows:

“Sec. 8. Burden of proof in bail application. – At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, reclusion perpetua, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.”

“Sec. 18. Notice of application to prosecutor. – In the application for bail under section 8 of this Rule, the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation. (18a)”

In *Cortes vs. Catral*,[14] we laid down the following rules outlining the duties of the judge in case an application for bail is filed:

- In all cases whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation (Section 18, Rule 114 of the Revised Rules of Criminal Procedure);
- Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion (Section 7 and 8, *id.*);
- Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
- If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, *id.*); otherwise the petition should be denied.

Based on the above-cited procedure, after the hearing, the court's order granting or refusing bail must contain a summary of the evidence of the prosecution and based thereon, the judge should formulate his own conclusion as to whether the evidence so presented is strong enough to indicate the guilt of the accused.[15]

Respondent judge did not follow the above Rules and procedure enumerated in Cortes.[16] He did not conduct a hearing before he granted bail to the accused, thus depriving the prosecution of an opportunity to interpose objections to the grant of bail. Irrespective of his opinion on the strength or weakness of evidence to prove the guilt of the accused, he should have conducted a hearing and thereafter made a summary of the evidence of the prosecution. The importance of a bail hearing and a summary of evidence cannot be downplayed, these are considered aspects of procedural due process for both the prosecution and the defense; its absence will invalidate the grant or denial of bail.[17]

Neither did respondent require the prosecution to submit its recommendation on whether or not bail should be granted.

He maintains that the prosecution did not object to the grant of bail to the accused, hence, he cannot be held administratively liable for not conducting a hearing.

In Santos vs. Ofilada,[18] we held that the failure to raise or the absence of an objection on the part of the prosecution in an application for bail does not dispense with the requirement of a bail hearing. Thus –

“Even the alleged failure of the prosecution to interpose an objection to the granting of bail to the accused will not justify such grant without hearing. This Court has uniformly ruled that even if the prosecution refuses to adduce evidence or fails to interpose any objection to the motion for bail, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions from which it may infer the strength of the evidence of guilt, or lack of it, against the accused. Where the prosecutor refuses to adduce evidence in opposition to the application to grant and fix bail, the court may ask the prosecution such questions as would ascertain the strength of the State’s evidence or judge the adequacy of the amount of bail. Irrespective of respondent judge’s opinion that the evidence of guilt against the accused is not strong, the law and settled jurisprudence demand that a hearing be conducted before bail may be fixed for the temporary release of the accused, if bail is at all justified.

Thus, although the provincial prosecutor had interposed no objection to the grant of bail to the accused, the respondent judge therein should nevertheless have set the petition for bail for hearing and diligently ascertain from the prosecution whether the latter was not in fact contesting the bail application. In addition, a hearing was also necessary for the court to take into consideration the guidelines set forth in the then Section, 6, Rule 114 of the 1985 Rules of Criminal Procedure for the fixing of the amount of the bail, Only after respondent judge had satisfied himself that these requirements have been met could he then proceed to rule on whether or not to grant bail.”

Clearly, therefore, respondent judge cannot seek refuge on the alleged absence of objection on the part of the prosecution to the grant of bail to the accused.

Respondent judge contends that the accused were entitled to their right to a speedy trial, hence, he granted bail without a hearing. He blames the prosecution for the delay.

Respondent’s contention is bereft of merit. There is no indication in the records of the criminal case that the prosecution has intentionally delayed the trial of the case. Even assuming there was delay, this does not justify the grant of bail without a hearing. This is utter disregard of the Rules. The requirement of a bail hearing has been incessantly stressed by this Court. In the same vein, the Code of Judicial Conduct enjoins judges to be conversant with the law and the Rules and maintain professional competence; and by the very nature of his office, should be circumspect in the performance of his duties. He must render justice without resorting to shortcuts clearly uncalled for. Obviously, respondent failed to live up to these standards.

It bears reiterating that respondent is being charged with knowingly rendering unjust judgment, gross ignorance of

the law and partiality. We ruled that in order to be held liable for knowingly rendering an unjust judgment or order, respondent judge must have acted in bad faith, with malice or in willful disregard of the right of a litigant.[19] A perusal of the records, specifically the assailed Order, hardly shows that any of these incidents has been proven.

On the charge of gross ignorance of the law, suffice it to say that to constitute such infraction, it is not enough that the subject decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty or corruption.[20] In *Guillermo vs. Judge Reyes, Jr.*[21] we categorically held that “good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.” In *Villanueva-Fabella vs. Lee*,[22] we ruled that “a judge may not be held administratively accountable for every erroneous order he renders. For liability to attach for ignorance of the law, the assailed order of a judge must not only be erroneous; more important, it must be motivated by bad faith, dishonesty, hatred or some other similar motive.” Complainant, having failed to present positive evidence to show that respondent judge was so motivated in granting bail without hearing, can not be held guilty of gross ignorance of the law.

As to the charge of partiality, we find no evidence to sustain the same. It is merely based on complainant’s speculation. Mere suspicion that a judge is partial is not enough. There should be clear and convincing evidence to prove this charge. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith and malice,[23] which are not present here.

We thus find respondent judge guilty of violation of Supreme Court Rules, specifically Rule 114 of the Revised Rules of Criminal Procedure on the grant of bail. This administrative offense is considered a less serious charge, punishable under Section 9(4) and Section 11(B-2), Rule 140 of the same Rules, thus:

“Sec. 9. Less Serious Charges. – Less serious charges include:

x x x

“4. Violation of Supreme Court Rules, directives, and circulars;

x x x

“Sec. 11. Sanctions. – x x x

“B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

- Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

- A fine of more than P10,000.00 but not exceeding P20,000.00.”

WHEREFORE, respondent Judge Alejandrino C. Cabebe, now retired, is found guilty of violation of Supreme Court Rules and is hereby fined in the sum of Twenty Thousand Pesos (P20,000.00), the same to be deducted from his retirement benefits.

SO ORDERED.

Panganiban, (Chairman), Carpio-Morales, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Filed with the Office of the Court Administrator, Rollo at 1-10.

- [2] Compulsorily retired from the Judiciary on March 26, 2003.
- [3] Annex “B”, Rollo at 14.
- [4] Annex “C”, *id.* at 15-17.
- [5] Rollo at 19-20.
- [6] *Id.* at 21-28.
- [7] *Id.* at 39-46.
- [8] Supplemental Comment, Rollo at 50-52.
- [9] *Id.* at 61.
- [10] A.M. No. RTJ-03-1767, March 28, 2003, 400 SCRA 37, citing *Directo vs. Bautista*, 346 SCRA 223 (2000); *People vs. Cabral*, 303 SCRA 361 (1999); *Basco vs. Rapatalo*, 269 SCRA 220 (1997).
- [11] *Te vs. Perez*, A.M. No. MTJ-00-1286, January 21, 2002, 374 SCRA 130.
- [12] *Marzan-Gelacio vs. Flores*, A.M. No. RTJ-99-1488, June 20, 2000, 334 SCRA 1, 12, citing *Aleria, Jr. vs. Velez*, 298 SCRA 611 (1998); *Basco vs. Rapatalo*, *supra*; *Almeron vs. Sardido*, 281 SCRA 415 (1997).
- [13] *Directo vs. Bautista*, *supra*.
- [14] A.M. No. RTJ-97-1387, September 10, 1997, 279 SCRA 1, citing *Basco vs. Rapatalo*, *supra*; emphasis and italics supplied.
- [15] *Marzan-Gelacio vs. Flores*, *supra*.
- [16] *Supra*.
- [17] *Narciso vs. Sta. Romana-Cruz*, G.R. No. 134504, March 17, 2000, 328 SCRA 505.
- [18] A.M. RTJ-94-1217, June 16, 1995, 245 SCRA 56; citing *Aguirre vs. Belmonte*, 237 SCRA 778 (1994); *Borinaga vs. Tamin*, 226 SCRA 206 (1993); *Libarios vs. Dabalos*, 199 SCRA 48 (1991); *Tucay vs. Domagas*, A.M. No. RTJ-95-1286, March 2, 1995, 242 SCRA 110.
- [19] *Sacmar vs. Judge Agnes Reyes-Carpio*, A.M. No. RTJ-03-1766, March 28, 2003, 400 SCRA 32.
- [20] *Heirs of the Late Nasser D. Yasin vs. Felix*, A.M. No. RTJ-94-1167, December 4, 1995, 250 SCRA 545.
- [21] A.M. No. RTJ-93-1088, January 18, 1995, 240 SCRA 154.
- [22] A.M. No. MTJ-04-1518, January 15, 2004, 419 SCRA 440.
- [23] *Philippine Geriatrics Foundation, Inc. vs. Layosa*, A.M. No. MTJ-00-1249, September 4, 2001, 364 SCRA 287.

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