

MILAGROS NIBAL, PETITIONER, VS. LEON O. TY, RESPONDENT.*Adm. Case No. 388. March 22, 1973*

Ponente: MAKASIAR, J.

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The records disclose that on April 11, 1959, petitioner Milagros Nibal filed this complaint for disbarment against respondent Leon O. Ty, charging the respondent with having, "thru deception, falsification and misrepresentation, attempted to frustrate the ends of justice and violated his lawyer's oath, x x x" as counsel for the defendant in Civil Case No. 28806, entitled "Milagros Nibal, et al. vs. Jorge L. Bocar," of the Manila Court of First Instance and later Manila Juvenile and Domestic Relations' Court, followed by a specification of the alleged acts of deception, falsification and misrepresentation (pp. 1-4, rec).

On May 14, 1959, respondent filed his answer denying all the specific charges against him, and in turn accusing complainant with utilizing the complaint for disbarment to extort money from him and his wife, as in fact complainant, with her brother and two other confederates, was caught by CIS agents receiving the blackmail or extortion money from his wife at Jack's Place (restaurant) near the Bonifacio Monument at Caloocan City, by reason of which complainant and her three confederates were charged with robbery (extortion) before the Court of First Instance of Rizal docketed as Criminal Case No. 8664, entitled "People of the Philippines vs. Milagros Nibal, et al." (pp. 9-39, rec). Attached to his answer are copies of the information for robbery against complainant and her co-accused and pictures of the complainant when caught by the CIS agents receiving the blackmail money and being arrested (Annexes "4" and "8", pp. 28-29, 38, rec).

On June 8, 1959, this case was referred to the Solicitor General for investigation, report and recommendation (p. 52, rec).

On January 13, 1960, respondent filed a motion to dismiss the disbarment proceedings against him on the ground that complainant was already convicted of robbery and sentenced to an imprisonment of from six (6) months of arresto mayor to six (6) years, one (1) month and eleven (11) days of prision mayor by the Court of First Instance of Rizal in a decision dated September 8, 1959 and was ordered committed to the Correctional Institution for Women, annexing thereto copies of the decision and the commitment order (Annexes "B" and "C", pp. 55-67, rec).

Complainant Milagros Nibal appealed her conviction to the Court of Appeals which dismissed her appeal on January 6, 1961, and an entry of judgment against her was made on January 31, 1961 (p. 86, rec).

While serving sentence in the Correctional Institution for Women, petitioner Milagros Nibal wrote a letter dated February 19, 1962 to the Solicitor General stating that she is not withdrawing her complaint against respondent (pp. 84-85, rec).

In a letter dated April 10, 1962, the superintendent of the Correctional Institution for Women informed then Assistant Solicitor General Pacifico P. de Castro that the maximum penalty of prisoner Milagros Nibal, with good conduct time allowance, will expire on December 24, 1965, and that said prisoner "can be made to attend hearings

any time under proper escorts" (p. 79, rec). Pursuant to said information, the Solicitor General set the hearing of the case on June 8, 1963.

The Solicitor General, in recommending the dismissal of the complaint, stated:

"Although according to information received from the Superintendent of the Correctional Institution for Women, the maximum penalty imposed upon complainant with good conduct time allowance would expire on December 24, 1965, she had already been released on parole before that date and had called on the Office of the Solicitor General to inquire about the case. This Office, therefore, set the hearing on June 8, 1963 at 8:30 A.M. and sent corresponding notices to the parties, the complainant, at her address appearing on record, which is 401-C, Int. 40, Perla Ext., Manila, in the form of a subpoena issued on May 28, 1963. The return of the subpoena shows that it was received by one Tomasa Adrales on June 6, 1963. When the case was called for hearing on the date set, in the Office of the Solicitor General, Department of Justice Building, Padre Faura St., Manila, only the respondent and his witnesses appeared. Complainant failed to appear, and no one appeared in her behalf. Whereupon, the respondent verbally moved for the dismissal of the case, reiterating his written Motion to Dismiss, supra, the service of a copy thereof to complainant he proved with the registry return receipt signed by complainant (Exhibit 1) on January 18, 1960.

"To give complainant still another chance, Solicitor Quiroz sent to her by registered mail at her recorded address on 401-C, Int. 40, Perla Ext., Manila, a notification in the form of a subpoena asking her to appear and testify at the investigation of the case on February 14, 1964 at 2:00 p.m. Similar subpoenas were likewise sent to Norma Soriano and Tomasa Adrales, both of the same address as complainant. All the three envelopes, however, were returned to sender unclaimed after a second notice. Complainant had not advised the Office of the Solicitor General of any change of address. When the case was called for hearing on the date and hour scheduled, the respondent was present but the complainant, together with Tomasa Adrales and Norma Soriano, were not. At that occasion, the respondent reiterated his written Motion to Dismiss dated January 13, 1960.

"From the foregoing facts, specially the following:

"(a) that complainant was charged with robbery (extortion) for having demanded from the respondent P2,000.00 but received from him only the sum of P138.00 so packed as to simulate the bigger amount, as a condition for the withdrawal of her instant complaint for disbarment, and she has been sentenced accordingly to suffer an indeterminate penalty ranging from six (6) months of Arresto Mayor as the minimum to six (6) years, one (1) month and eleven (11) days of Prision Mayor as the maximum';

"(b) that complainant's appeal from the decision of the Court of First Instance of Rizal was dismissed for failure to prosecute, and as a consequence, she served the sentence;

"(c) that although she received a copy of the motion to dismiss filed by the respondent on January 13, 1960, she never filed any opposition thereto; and

"(d) that when the case was called for hearing on June 8, 1963 and again on February 14, 1964, the complainant failed to appear and up to present she had not offered any explanation for her failure to do so;

the lack of merit of the complaint has become evident to such a degree sufficient to justify the dismissal thereof, considering further that this case has long been pending. The lack of interest of the complainant also appears clearly evident from the fact of her conviction of robbery (extortion) in connection with her filing the present charges against the respondent which conviction will constitute estoppel against her as to the facts found by the trial court as establishing the circumstances which motivated her to file this disbarment proceedings, and from her failure to appear in the scheduled hearings and to inform the Office of the Solicitor General of her change of address.

"At any rate, in disbarment or suspension proceedings of attorney s-at-law, the rule has been consistently adopted

that in view-Of the serious consequences of such proceedings, 'clearly preponderant evidence is necessary to justify the imposition of either penalty' (De Guzman vs. Tadeo, 68 Phil. 554; Lim vs. Antonio, Adm. Case No. 848, Sept. 30, 1971, 34 SCRA 44)." (pp. 129-132, rec).

WHEREFORE, THIS DISBARMENT CASE AGAINST RESPONDENT LEON O. TY IS HEREBY DISMISSED.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Antonio, and Esguerra, JJ., concur.

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