

FILEMON QUINIO, COMPLAINANT, VS. ANITA BORBOLLA, RESPONDENT.*A.M. No. P-238. September 30, 1977*

Ponente: GUERRERO, J.

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The respondent, Mrs. Anita Borbolla, a Senior Clerk in the City Court of Manila, Branch IX, is accused of Estafa Thru Falsification of Public Document by the complainant, Dr. Filemon Quinio, of 295 Menlo, corner Taft Avenue, Pasay City in his affidavit[1] duly subscribed on January 30, 1977 at the Special Action Unit, Malacanang, Manila, which office referred the matter to this Court for administrative investigation.

From the allegations in the affidavit of the complainant, it appears that Dr. Quinio came to know and met respondent on or about October 22, 1973 when he went to the office of the respondent in the City Court of Manila, Branch IX to post his bail of P1,000.00 cash in connection with Crim. Case No. F-161106 filed against him in said court; and that then and there respondent told him that she was in charge of, or could help him in filing his bond.

Thereupon, respondent received from complainant the sum of P1,000.00 cash for the purpose of paying the same to the Office of the City Cashier as bail bond of the complainant in the aforesaid criminal case, but far from making said payment respondent presented to the complainant a recall order[2] supposedly signed by Atty. J.M. Naciongayo, Deputy Clerk of Court, for the return of the warrant of arrest issued against the complainant wherein is annotated the payment of P1,000.00 under Official Receipt No. 4352326-0 dated October 22, 1973 which in truth and in fact was Official Receipt No. 43532-Q[3] dated September 6, 1973, for P100.00 only and not in the name of the complainant, further showing subsequently to complainant Official Receipt No. 43410-K[4] in the name of complainant as payee but with an altered date, i.e., 10-22-73 and an altered or falsified amount of P1,000.00 which in truth and in fact was an official receipt for only P100.00 and dated December 10, 1973 and thru these falsifications of public documents, respondent did then and there misappropriate the amount of P900.00 to the damage and prejudice of the complainant.

It also appears in the affidavit that respondent after admitting the truth of the charges, asked for forgiveness, promised to return the money and did in fact on December 19, 1973 deposit the sum of P900.00 with the cashier's office under Official Receipt No. 52080[5] dated December 19, 1973 to complete the P1000.00 cash bail bond of the complainant.

Respondent submitted her reply[6] dated December 11, 1974 to the charges of Dr. Filemon Quinio, claiming that the charges are not only malicious and perjured but also for the purpose of harassing her as well as to help him settle his case with a certain Indian national who filed a case of Estafa against him before Branch IX of the City Court of Manila docketed as Crim. Case No. F-161106 entitled "People of the Philippines v. Dr. Filemon Quinio"; that Dr. Quinio left with her the sum of P1,000.00 for the purpose of securing the release or cancellation of the warrant of arrest against him; that since there was actually no warrant of arrest issued against Dr. Quinio and there

was no necessity to make the deposit, she kept the money; that she committed a mistake due to pressure of work and haste in typing inadvertently P100.00 in the payment order to the City Treasurer's Office instead of P1,000.00; that Dr. Quinio attempted to extort P5,000.00 from her in consideration of his withdrawal of the present charges against her before the Office of the President and before the Supreme Court.

Upon being referred to the complainant on December 13, 1974, the latter made his comment[7] on the answer of the respondent, reiterating his accusation against the respondent. The case was thereupon referred to the Supreme Court and was assigned to Executive Judge Gerino M. Tolentino of the City Court of Manila who finally directed Judge Roque A. Tamayo, Branch XV, to investigate, render his report and recommendations thereon.

Judge Tamayo conducted an investigation and submitted his report⁸ on the investigation, findings and recommendations, pertinent portions of which read:

"From the documents on hand in this case, it would really seem that, prima facie, the claim of complainant has been substantiated, that really there were alterations visibly apparent to the naked eye, made on the annexes submitted by him, which are receipts issued to said complainant at the intervention of the respondent. Thus, O.R. No. 4341 OK (Annex C) has been made to appear as having been issued on December 22, 1973, to one Filemon Quinio for One Thousand Pesos (P1,000.00) which again showed alteration visible to the naked eye, for cash bail. The figure P1,000.00 also appears to have been altered. And as claimed by complainant, after verification from the duplicate of the same receipt, O. R. No. 43410K (Annex D), on file with the City Treasurer's Office, the date clearly showed December 10, 1973, issued to Filemon Quinio for One Hundred Pesos only (in words) representing cash bail for himself in Crim. Case No. 161106 for the amount of P100.00 (in figures); that what has been annotated at the bottom left hand corner of the Recall Order (Annex A) is O. R. No. 4352326-Q dated October 22, 1973 for P1,000.00 which turned out to be O. R. No 4352326-Q issued on September 6, 1973, to another person nor Filemon Quinio, and for the amount of only P10.00.

On the side of the respondent, her letter to Atty. Arturo B. Buena, Executive Officer of the Supreme Court of the Philippines, contains explanations to the effect, that since there was no warrant outstanding as yet for the arrest of Dr. Filemon Quinio, she had to keep the P1,000.00 for safekeeping, but because complainant wanted a recall order which is now marked as Annex A of the complaint: that she prepared a payment order for P1,000.00 addressed to the City Treasurer's Office wherein it is stated that Dr. Filemon Quinio will deposit P1,000.00 as cash bail in connection with this case, because Dr. Quinio was so insistent on getting that payment order, but because of pressure of work, she inadvertently typed P100.00 therein, and so a receipt for P100.00 was issued by the City Treasurer's Office. That, coming to realize she committed a mistake in the preparation of the payment order, and upon being informed by Dr. Quinio of her mistake, she immediately made representation with the City Treasurer's Office of Manila to accept the additional bond of P900.00 for said Dr. Quinio to complete his bond of P1,000.00.

However, the claim of respondent that it will not benefit her if she committed the alleged falsification is a lame excuse because it was Dr. Quinio the complainant, as shown by the Citygram, who insisted that there were mistakes which must be rectified and in two instances (Annexes F and G)."

The Court, however, made the following observations:

"On the other hand, the Court is now faced with a dilemma in further proceeding with the investigation of this case, for despite the documentary evidence on hand consisting of sworn statements of the complainant, with annexes which are xerox or photo copies of the documents allegedly falsified to commit the crime of estafa, the answer of respondent and reply to said answer, the record vitally lacks the element of proper identification and/or affirmation of the sworn statement of the complainant, and considering that the reply of respondent was not under oath, full dress hearing should have been conducted by the Court to complete the investigation.

What is more, the Court is faced with the dilemma of having before it documents purporting the prima facie showing of the commission of the crime of falsification of public documents, but which for lack of proper identification, affirmation or oral testimony respecting the incidents which are evidentiary in nature, and therefore, would be just mere scraps of paper without said identification and/or affirmation by the proper parties. Furthermore considering the legal effects of the affidavit of desistance of the complainant itself, whatever chance to Court has to elicit from him an affirmation or identification of his complaint and the documents attached to it, has now been denied to the Court by which it may intelligently use the documents in arriving at a conclusion upon which may be based its report and recommendation to the Supreme Court.

Wherefore, it is most respectfully recommended that this case be dismissed."

As found by the Investigating Judge, we note the letter of desistance⁹ of the complainant, to wit:

"295 Menlo Street corner
Taft Ave., Pasay City
March 4, 1975

The Honorable Salvador Abad Santos
Assistant Fiscal
Office of the City Fiscal
Manila

Dear Fiscal Abad Santos:

Subject:

Mrs. Anita Borbolla

I.S. No. 75-1199 and 74-31127

I wish to most respectfully inform the Honorable Assistant Fiscal that I am no longer interested in further prosecuting the charges against Mrs. Anita Borbolla for "Estafa Through Falsification of Public Documents," etc., in I.S. Nos. 75-1199 and 74-31127.

Mrs. Borbolla during the past few weeks has renewed her appeal for forgiveness and understanding relative to the 1973 incident which gave rise to the filing of these charges. Human compassion and charity, among other things, have prompted me to make this decision. Besides, a possible protracted trial would further affect adversely both my profession and various business interests which, as it is, have already suffered tremendously since the time I instituted these charges against Mrs. Borbolla with the Office of the President on or about January 30, 1974. I also took into consideration the fact that Mrs. Borbolla had subsequently made full payment of my cash bail of P1,000.00 on or about December 19, 1973 with the Office of the City Treasurer in Manila during the circumstances already described in my various affidavits.

I wish to make it clear, however, that this decision of mine is not to be construed as a retraction of any of the things I have stated under oath in the several affidavits I have executed and submitted to the different agencies of the government relative to the same incident. I have just lost interest, for reasons stated above, in pressing further these charges against Mrs. Anita Borbolla — and I have decided to simply forgive and forget.

Thank you.

Very respectfully,

(Sgd.) FILEMON QUINIO"

and also the affidavit of desistance^[10] found in the Records, page 38:

"REPUBLIC OF THE PHILIPPINES)

CITY OF MANILA)

x -----x

AFFIDAVIT OF DESISTANCE

I, DR. FELIMON QUINIO, of legal age, married, and a resident of 295 Menlo Street, corner Taft Avenue, Pasay City, after being duly sworn to in accordance with law do hereby depose and say:

1. That I am the complainant in Administrative Case No. P-238 for Estafa Thru Falsification of Public Document against Mrs. Anita Borbolla of the Office of the Clerk of Court, City Court of Manila;

2. That I am no longer interested in further prosecuting the administrative charges against Mrs. Anita Borbolla.

AFFIANT FURTHER SAYETH NAUGHT.

(Sgd.) FELIMON QUINIO

Affiant

SUBSCRIBED AND SWORN to before me this 5th day of August, 1975 at Manila, Philippines.

(Sgd.) ROQUE A. TAMAYO

City Judge, Branch XV

City Court of Manila"

It appeared that in the investigation, both the complainant and respondent were present; that the complaint filed by complainant for Estafa Thru Falsification of Public Document in the Office of the City Fiscal of Manila had been dropped by Assistant City Fiscal Salvador Abad Santos by reason of the desistance of the complaining witness himself which is certified to by the Chief of the Records Section as follows:[11]

March 6, 1975

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of this office, the charge of "ESTAFA THRU FALSIFICATION OF PUBLIC DOCUMENT" bearing I. S. No. 74-31227, brought for action on December 16, 1974 by Dr. Filemon Quinio against ANITA BORBOLLA was recommended dropped on March 4, 1975 by Assistant Fiscal Salvador S. Abad Santos due to desistance and duly approved on the same date, by Second Assistant City Fiscal Luis A. Peña, Chief, Opinion & Research Division.

This certification is issued upon the request of the above named respondent.

(Sgd.) EDISON T. MAGALIT

Chief, Records Division"

The Court looks with disfavor upon the dropping of criminal complaints upon mere affidavits of desistance of the complainant. particularly where the commission of the offense as in this case is duly supported by documentary evidence.

In the resolution of this Court dated June 21, 1977, re this Administrative Matter No. P-238, Filemon Quinio vs. Anita Borbolla, the Executive Judge of the City Court of Manila was, therefore, directed to proceed with the investigation of this case in order to determine respondent's fitness to remain as an employee in the Judiciary.

In the letter July 22, 1977, Executive Judge Avelino Constantino informed the Acting Judicial Consultant that he

cited respondent Anita Borbolla to appear before him on July 20, 1977 for investigation; and that "on said date of investigation, the respondent filed a letter dated June 30, 1977, copy enclosed, tendering her resignation effective July 29, 1977, alleging that she is joining her husband in Saudi Arabia. By reason, therefore, of respondent's voluntary resignation, and her service records show that she is not entitled to receive either gratuity or terminal leave pay, her leave credit having been exhausted, the undersigned is of the view that a further investigation of her case is no longer necessary, the purpose of such investigation having been in effect achieved with the voluntary separation of the respondent from the judiciary." [12]

Attached to the Records is a xerox copy of the letter of resignation of respondent dated June 30, 1977 which was acknowledged and noted by Executive Judge Avelino M. Constantino on July 29, 1977. Such tender of resignation is ineffective in view of the pendency of this Administrative case against respondent.

The records and the evidence found herein clearly and indubitably show that there is a prima facie evidence that the respondent Anita Borholla committed the crime of Estafa Thru Falsification of Public Document, a crime which involves moral turpitude.

WHEREFORE, We hereby find respondent Anita Borbolla guilty of dishonesty in the discharge of her duties as senior clerk in the City Court of Manila. In view of respondent's abandonment of office, no administrative penalty may be imposed upon her except to pronounce said respondent perpetually disqualified for appointment to any position in any branch of the government service, whether pertaining to the national or local Government, including government-owned and/or controlled instrumentalities and agencies.

Let copy of this Decision be spread on respondent's personal record, and copies furnished the Office of the President and the Civil Service Commission. Let copy hereof be furnished the Secretary of Justice for appropriate prosecution of the criminal case erroneously dropped by the City Fiscal's Office.

Teehankee (Chairman), Makasiar, Muñoz Palma, Martin, and Fernandez, JJ., concur.

[1] Records, pp. 1-3.

[2] Records, p. 3.

[3] Records, p. 7.

[4] Records, p. 5.

[5] Records, p. 10.

[6] Records, pp. 13-17,

[7] Records, pp. 21-26.

[8] Records, pp. 31-36.

[9] Records, p. 37.

[10] Records, p. 38.

[11] Records, p. 30.

[12] Records, p. 56.

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