

EDUARDO CATE AND ROSA REYEL-CATE, COMPLAINANTS, VS. HON. JOSE P. ALEJANDRO, RESPONDENT.*Adm. Case No. 280-J. May 31, 1973*

Ponente: FERNANDO, J.

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It cannot be truly said of this administrative complaint for dereliction of duty or negligence in the performance thereof against respondent Judge Jose P. Alejandro, which barely filled up two pages, that there is that fullness of recital that would lend it a high persuasive quality. Nonetheless, in the light of this court's adherence to the principle that an alleged grievance entertained by citizens at any action taken by a judge should not just be ignored, it was given more than perfunctory attention.[1] Respondent Judge, then of the Court of First Instance of Cavite, now transferred to the Court of First Instance of Manila, is sought to be held accountable for the dismissal of a case against a certain accused, Nolito Santamaria, who was prosecuted for the crime of homicide with less serious physical injuries. This was done before he could be arrested. The complainants are the parents of the deceased, victim of such offense charged.

Upon being required to comment, respondent Judge filed a pleading impressing on this Court that there is no basis for a complaint against him. He started by referring to the antecedents of the alleged offense imputed to him. Thus: "On September 8, 1970, five (5) persons, namely: (1) Nolito Santamaria, alias Nollie, (2) Pascualito Mariano, alias Lito, (3) Rolando Malia, alias Bodyok, (4) Tito Molina, and (5) John Doe, were accused of homicide with slight physical injuries before the Municipal Court of Noveleta, Cavite. The four named accused filed their respective bonds, and the Municipal Court, after having conducted the preliminary investigation, remanded the case to the Court of First Instance of Cavite, the case having been assigned to Branch II thereof, with the respondent then as the Presiding Judge. On September 20, 1971, the Fiscal filed a motion to dismiss alleging, among other things, that before the corresponding information could be reproduced in the Court of First Instance, a reinvestigation, at the instance of counsel for the offended parties and counsel for the accused, was conducted by the Fiscal and, as a consequence, a separate information for murder had already been filed against Nolito Santamaria with the Circuit Criminal Court (presided by Judge Onofre Villaluz) on September 17, 1971, and a separate information for less serious physical injuries against Pascualito Mariano had been filed with the Municipal Court of Noveleta, Cavite. As there was no showing that a copy of the motion to dismiss has been served upon the counsel for the accused, the respondent did not immediately act upon said motion. On September 30, 1971, counsel for Nolito Santamaria filed a manifestation, praying that resolution on the motion to dismiss be held in abeyance until he shall have filed an opposition, which he did on October 7, 1971. The following day, October 8, the Fiscal filed a motion, praying that the motion to dismiss be set for hearing on October 14, 1971 at 8:30 a.m., 'citing the accused Nolito Santamaria to appear on said date and hour and likewise notifying his bondsmen Celedonio Santamaria, Virgilio Valido and Gorgonia Viniegra, so that the said accused may be surrendered to the Honorable Court on said date and time for his commitment to the Circuit Criminal Court at Pasig, Rizal.'"[2]

He explained in a more specific manner why he felt that legally he has to dismiss the case: "On October 11, 1971, subpoena was sent to Nolito Santamaria requiring him to appear in Court on October 14, 1971 at 8:30 a.m. Also notified were bondsmen Celedonio Santamaria, Virgilio Valido and Gorgonia Viniegra, as well as P. Santamaria, father of Nolito Santamaria. Due to the storm and the flooded and impassable roads, particularly in Panamitan, leading to the Court house, the hearing on the motion was not held. On October 15, 1971, the Fiscal filed a reply to the opposition to the motion to dismiss and prayed, among other things, that the resolution on the motion to dismiss 'must await the surrender of the accused Nolito Santamaria by his bondsmen so that he may be forthwith committed to the Circuit Criminal Court at Pasig, Rizal.' It will thus be noted that respondent actually granted the request of the Fiscal to make the accused appear at the hearing of the motion. But it was certainly or already unreasonable for the Fiscal to ask for the deferment of the resolution of the motion to dismiss pending the surrender of the accused Nolito Santamaria. By the clear mandate of the law, respondent is required to resolve the motion within three (3) months from date of submission. Such motion, therefore, bared the real intention of the Fiscal in filing the motion to dismiss, to wit, to utilize the Court as the instrument in effecting the arrest of the accused to answer the charge of murder filed with the Circuit Criminal Court in Pasig, Rizal. Evidently, what complainants mean by dereliction and/or negligence of duty was the failure on the part of respondent to have complied with an illegal and unreasonable demand by the Fiscal. Thus, in all humility, respondent sincerely and honestly believes that he was never remiss nor negligent in the performance of his duty on the matter." [3]

The pains he took before the final order of dismissal and the legal ground for such action taken was stressed by him thus: "With the filing of the reply of the Fiscal to the opposition to the motion to dismiss, the issue which is purely legal was already ripe for resolution. But as the parties wished to be heard orally, the hearing was set for November 15, 1971. This prompted the Fiscal to move that the hearing be advanced to October 22, 1971, instead of November 15, 1971. On October 22, 1971, the defense counsel filed a manifestation and urgent motion, alleging that because he had to attend to the hearing of another criminal case on that date, he prayed that the hearing be held on November 15, 1971, as previously scheduled. There was no opposition. So the hearing, as previously scheduled, remained in the calendar of the Court. During the hearing on November 15, 1971, the parties did not adduce any additional argument pro or con, and neither was there any insistence for the production of the person of Nolito Santamaria, a fact which gave the respondent the impression that the prosecution did not really desire to pursue an untenable position that would embarrass the Court. On November 17, 1971, the defense counsel filed a written memorandum in support of his stand, furnishing the Fiscal with a copy thereof on the same date. Under the foregoing facts, and considering that respondent had in fact required the presence of the accused at the hearing of the motion to dismiss although his presence is mandatory only during the arraignment (Sec. 2, Rule 116 of the Rules of Court) and during the promulgation of the judgment (Sec. 6, Rule 120 of the Rules of Court), and believing that the presence of the accused, in the hearing of said motion to dismiss which involved a question of law, is not necessary nor required (1 Bishop, New Criminal Procedure, Sections 176 and 277), and that the resolution of said motion would be indefinite if the Court would 'await the surrender of the accused Nolito Santamaria,' the respondent, as Presiding Judge of Branch II, 7th Judicial District, issued the following order on December 23, 1971: 'After a careful consideration of the Fiscal's motion to dismiss, the accused's opposition thereto, the reply to the opposition, and the memorandum of counsel for the accused, this Court finds the motion to be well-taken for the reasons stated therein, especially considering the fact that before the corresponding information could be reproduced before this Court, the offended parties and the accused, thru their respective counsel, moved for a reinvestigation, and that during the reinvestigation conducted by the Office of the Provincial Fiscal the witnesses for the complainants and the accused were presented and cross-examined. [Wherefore], let this case be, as it is hereby, dismissed with cost de officio.'" [4]

With the above explanation, it would appear that respondent Judge cannot be held liable for dereliction of duty or

negligence in the fulfillment thereof. It cannot be said that in thus issuing the order of dismissal, he was remiss in his obligation as a member of the judiciary. There is no warrant for imputing to him willful noncompliance with what the law prescribes or a failure to abide by what it commands. Nor is there lacking that degree of care which, under the special circumstances of the case, a reasonable man would use, thus justifying a finding of negligence.[5] This is not to deny, though, that a judge who is much more punctilious than respondent Judge could have perhaps postponed action on the motion to dismiss to assure that the accused does not in any wise benefit from the grant thereof. He could have had the case placed in the archives, to be calendared anew upon the apprehension of the accused. For one thing, that would be to avoid a possible twice in jeopardy claim. Equally so, there would be no distress unnecessarily caused complainants as parents of the victim. That is moreover to lend greater assurance that whoever is responsible for any infraction of the criminal law should be dealt with as he ought to be. As it is, to return to the state of mind of complainants, who could blame them for the attitude of marked disapproval for action taken by any public official, even if it be a court, that would make the enforcement of the penal statute any more difficult? With all that, in the light of the foregoing, the most that can be visited on respondent Judge is a reminder of such other considerations that fortify public faith and esteem in the occupants of the bench as impartial and careful dispensers of justice.

WHEREFORE, the complaint against respondent Judge is dismissed.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.
Barredo, J., did not take part.

[1] Cf. Tobias v. ERICTA, Adm. Case No. 242-J, July 29, 1972, 46 SCRA 83.

[2] Comment dated April 27, 1973, 1-2.

[3] Ibid, 3-4.

[4] Ibid, 4-6.

[5] Cf. Radin, Law Dictionary, 218 (1966).

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