

NORYN S. TAN, PETITIONER, VS. JUDGE MARIA CLARITA CASUGA-TABIN, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 4, BAGUIO CITY, RESPONDENT.

A.M. No. MTJ-09-1729 (Formerly OCA I.P.I. No. 07-1910-MTJ). January 20, 2009

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Noryn S. Tan (complainant) filed a Complaint dated April 2, 2007 against Judge Maria Clarita Casuga-Tabin (respondent) of the Municipal Trial Court in Cities (MTCC), Branch 4, Baguio City for denial of due process relative to Criminal Case No. 118628.

Complainant avers: On November 9, 2006, the Philippine National Police (PNP) Quezon City Police District (QCPD) served her a warrant of arrest dated October 13, 2006, issued by the MTCC Baguio City, Branch 4, presided by respondent, relative to Criminal Case No. 118628 for alleged violation of Batas Pambansa Blg. 22. It was only then that she learned for the first time that a criminal case was filed against her before the court. She was detained at the Quezon City Hall Complex Police Office and had to post bail of P1,000.00 before the Office of the Executive Judge of the Regional Trial Court (RTC) of Quezon City for her temporary release. Upon verification, she learned that respondent issued on August 8, 2006 an Order directing her to appear before the court on October 10, 2006 for arraignment. It was sent by mail to PNP Quezon City for service to her. However, she did not receive any copy of the Order and up to the present has not seen the same; hence, she was not able to attend her arraignment. She also found out that there was no proof of service of the Order or any notice to her of the arraignment. This notwithstanding, respondent issued a warrant for her arrest. Complainant alleges that she was deeply aggrieved and embarrassed by the issuance of the warrant for her arrest despite the fact that she was never notified of her arraignment. Complainant prayed that the appropriate investigation be conducted as to the undue issuance of a warrant for her arrest.[1]

In her Comment[2] dated July 5, 2007, respondent answered: She issued the warrant of arrest because when the case was called for appearance, the complainant, as accused therein, failed to appear. Prior to the issuance of the warrant of arrest, her staff sent by registered mail the court's Order dated August 8, 2006 addressed to complainant "through the Chief of Police, PNP, 1104, Quezon City" directing complainant to appear on October 10, 2006 at 8:30 a.m. for the arraignment and preliminary conference in Criminal Case No. 118628, as proven by Registry Receipt No. 0310. It is true that the return on the court's Order dated August 8, 2006 had not yet been made by the QC Police on or before October 10, 2006. Nonetheless, she issued the warrant of arrest in good faith and upon the following grounds: (a) under Sec. 3 of Rule 131[3] of the Rules of Court, the court was entitled to presume that on October 10, 2006, after the lapse of a little over two months, official duty had been regularly performed and a letter duly directed and mailed had been received in the regular course of mail; and (b) Sec. 12 of the 1983 Rule on Summary Procedure in Special Cases provides that bail may be required where the accused does not reside in the place where the violation of the law or ordinance was committed. The warrant of arrest she issued was meant to implement this provision, which was not repealed by the 1991 Revised Rule on Summary

Procedure, since complainant is a resident of Quezon City and not of Baguio City. If her interpretation was erroneous, she (respondent) believes that an administrative sanction for such error would be harsh and unsympathetic. She has nothing personal against complainant and did not want to embarrass or humiliate her. She issued the warrant in the honest belief that her act was in compliance with the rules. She prays that the case against her be dismissed and that a ruling on the interpretation of Secs. 10 & 12, of the 1983 Rule on Summary Procedure in Special Cases, in relation to Sec. 16 of the 1991 Revised Rule on Summary Procedure be made for the guidance of the bench and bar.[4]

The OCA, in its agenda report dated September 28, 2007, recommended that the case be dismissed for lack of merit. It held: Prior to the filing of the information, a preliminary investigation was conducted by the provincial prosecutor resulting in the Resolution dated July 11, 2006 recommending the filing of the case; it was incredulous for complainant to claim that she came to learn for the first time of the filing of the criminal case when the warrant of arrest was served on her; furthermore, there was already a complete service of notice as contemplated in Sec. 10, Rule 13[5] of the Rules of Court; hence the requirement of notice was fully satisfied by the service of the Order dated August 8, 2006 and the completion of the service thereof.[6]

Adopting the recommendation of the OCA, the Court on November 12, 2007 issued a Resolution dismissing the case for lack of merit.[7]

Complainant filed a Motion for Reconsideration dated January 8, 2008 alleging: The issue in this case was not whether complainant was aware of the criminal complaint against her, but whether the issuance of a warrant of arrest against her despite the absence of notice should be administratively dealt with; complainant was never notified of the arraignment; thus, she was not able to attend the same; respondent admitted in her Comment that no return had yet been made on or before October 10, 2006, the date respondent ordered the warrant to be issued; her explanation of good faith was therefore unjustifiable; neither could respondent invoke the presumption of regularity of performance of official duty, since the complainant did not actually receive any notice; respondent in an Order dated March 14, 2007 admitted that since she did not usually wear eyeglasses during hearings, she thought that the acknowledgment receipt at the back of the Order referred to the copy sent to complainant; later scrutiny, however, showed that it pertained to the one sent to the prosecutor's office; Section 10, Rule 13 of the Rules of Court did not apply to the instant case; the Order was addressed and sent to PNP Quezon City; assuming that the Order was properly served on the PNP, it was not equivalent to a service on complainant; there was no actual delivery of the Order to the complainant; hence, there was no personal service; neither was it served by ordinary mail or by registered mail; thus, the rule on completeness of service had not been satisfied; complainant was not aware of and therefore did not attend the preliminary investigation of her case; no proof can be shown that she was ever notified of the said preliminary investigation, much less of the filing of the same.[8]

In a Resolution dated April 16, 2008, the Court required respondent to Comment on complainant's Motion for Reconsideration.[9]

Complainant filed a Comment stating: Complainant's motion did not raise any new issue or ground that would merit the reconsideration of the Court's November 12, 2007 Resolution; complainant failed to rebut the presumption that she was notified of the scheduled arraignment; what complainant propounded was a mere self-serving denial that she never received the subpoena intended for her; there was no explanation why she would be able to receive a warrant of arrest; which was coursed in the same manner as the subpoena, in a little less than a month, but allegedly to receive the subpoena in almost two months; if complainant's assertion was to be believed, the effect would be to paralyze the operation of courts in the provinces that had to inevitably rely on the police resources of Metro Manila; arraignments could not proceed and trials could not go on; it was reasonable to follow as a rule that once a pleading or any other official document was received in the ordinary course of sending them,

it must be presumed that others of the same nature were also delivered to the named addressees; to believe otherwise would be to delay justice for those residing outside Metro Manila.[10]

The Court finds the Motion for Reconsideration to be impressed with merit.

Whenever a criminal case falls under the Summary Procedure, the general rule is that the court shall not order the arrest of the accused, unless the accused fails to appear whenever required.[11] This is clearly provided in Section 16 of the 1991 Revised Rule on Summary Procedure which states:

Sec. 16. Arrest of accused. - The court shall not order the arrest of the accused except for failure to appear whenever required. Release of the person arrested shall either be in bail or on recognizance by a responsible citizen acceptable to the court. (Emphasis supplied)

In this case, respondent claims that the issuance of a warrant for the arrest of complainant was justified, since complainant failed to appear during the arraignment in spite of an order requiring her to do so. Respondent admits, however, that a copy of the Order dated August 8, 2006, was sent to complainant "through the Chief of Police, PNP, 1104, Quezon City."

While it is true that the Rules of Court provides for presumptions, one of which is that official duty has been regularly performed, such presumption should not be the sole basis of a magistrate in concluding that a person called to court has failed to appear as required, which in turn justifies the issuance of a warrant for her arrest, when such notice was not actually addressed to her residence but to the police in her city. So basic and fundamental is a person's right to liberty that it should not be taken lightly or brushed aside with the presumption that the police through which the notice had been sent, actually served the same on complainant whose address was not even specified.

Respondent further admitted in her Comment dated July 5, 2007 that when she proceeded with the arraignment on October 10, 2006 as scheduled, no return had yet been made by the Quezon City Police.[12] Nevertheless, she issued the warrant of arrest, arguing that she did so on the presumption that regular duty had been performed, and that the Order had been received in the regular course of mail; and since Sec. 12 of the 1983 Rules on Summary Procedure provides that bail may be required where the accused does not reside in the place where the violation of the law or ordinance was committed, the warrant of arrest she issued was justified since complainant is a resident of Quezon City and not of Baguio City.

The Court disagrees.

Sections 10 and 12 of the 1983 Rules on Summary Procedure in Special Cases (As Amended) state:

Sec. 10. Duty of the Court. - On the basis of the complaint of information and the affidavits accompanying the same, the court shall make a preliminary determination whether to dismiss the case outright for being patently without basis or merit, or to require further proceedings to be taken. In the latter case, the court may set the case for immediate arraignment of an accused under custody, and if he pleads guilty, may render judgment forthwith. If he pleads not guilty, and in all other cases, the court shall issue an order, accompanied by copies of all the affidavits submitted by the complainant, directing the defendant(s) to appear and submit his counter-affidavit and those of his witnesses at a specified date not later than ten (10) days from receipt thereof.

Failure on the part of the defendant to appear whenever required, shall cause the issuance of a warrant for his arrest if the court shall find that a probable cause exists after an examination in writing and under oath or affirmation of the complainant and his witnesses. (Emphasis supplied)

x x x x

Sec. 12. Bail not required; Exception. --- No bail shall be required except when a warrant of arrest is issued in

accordance with Section 10 hereon or where the accused (a) is a recidivist; (b) is fugitive from justice; (c) is charged with physical injuries; (d) does not reside in the place where the violation of the law or ordinance was committed, or (e) has no known residence.

Section 12 of the 1983 Rules on Summary Procedure was not reproduced in the 1991 Revised Rules on Summary Procedure, while Section 10 was revised and portions thereof reproduced in Sections 12[13] and 16 of the 1991 Rules on Summary Procedure. Granting, *arguendo*, that Sections 10 and 12 of the 1983 Rules on Summary Procedure in Special Cases were not repealed by the 1991 Revised Rules, still it does not justify the warrant of arrest issued in this case. Section 12 talks of instances when bails are required, one of which is when the accused does not reside in the place where the violation of the law or ordinance was committed. It does not state, however, that a warrant of arrest shall immediately issue even without actual notice to the accused. Respondent's interpretation ascribes to the rules those which were not expressly stated therein and unduly expands their meaning.

The Court also notes that in an Order dated March 14, 2007, a copy of which was attached by complainant to her Motion for Reconsideration, respondent admitted that:

As a point of clarification, during the hearing on October 10, 2006, when the case was called and the accused failed to appear, the Court verified from the staff if the Accused was notified to which said staff answered in the affirmative, showing to the Court a copy of the Order dated August 8, 2006, setting this case for Appearance of the Accused on October 10, 2006. At the back of the Order was an attached Acknowledgment Receipt. A quick glance of the said receipt, and without eyeglasses of the Presiding Judge, as she does not usually wear one during Court sessions, made this Court believed that indeed, that was the Acknowledgment Receipt proving that the Accused was served with a copy of the said Order.

The attention of the Court was called upon receipt of the Accused's Motion for Clarification and a closer look on the Acknowledgment Receipt shows that the same was for the City Prosecutor's Office. x x x[14] (Emphasis supplied)

From this, it can be inferred that respondent issued the warrant of arrest on the mistaken belief that complainant was actually notified of the arraignment. A closer scrutiny of the records however showed that the Acknowledgment Receipt pertained to the copy of the City Prosecutor's Office and not that of complainant's.

Whatever the real reasons behind respondent's issuance of complainant's warrant of arrest -- whether from the mistaken belief that complainant was actually notified, or the presumption that the police had served a copy of the order on complainant or that the rules allow immediate issuance of warrants of arrests whenever the accused does not reside in the locality where the crime was committed -- the fact is, respondent failed to uphold the rules, for which she should be held administratively liable.

The Court has held that a judge commits grave abuse of authority when she hastily issues a warrant of arrest against the accused in violation of the summary procedure rule that the accused should first be notified of the charges against him and given the opportunity to file his counter-affidavits and countervailing evidence.[15]

While judges may not always be subjected to disciplinary action for every erroneous order or decision they render, that relative immunity is not a license to be negligent, abusive and arbitrary in their prerogatives. If judges wantonly misuse the powers vested in them by law, there will not only be confusion in the administration of justice but also oppressive disregard of the basic requirements of due process.[16] While there appears to be no malicious intent on the part of respondent, such lack of intent, however, cannot completely free her from liability.[17] When the law is sufficiently basic, a judge owes it to her office to know and simply apply it.[18]

Considering that this is respondent's first administrative infraction in her more than 8 years of service in the

judiciary,[19] which serves to mitigate her liability, the Court holds the imposition of a fine in the amount of P10,000.00 to be proper in this case.[20]

WHEREFORE, Judge Maria Clarita Casuga-Tabin, Municipal Trial Court in Cities, Branch 4, Baguio City is hereby found guilty of abuse of authority for which she is fined in the sum of P10,000.00.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura and Leonardo-De Castro[*], JJ., concur.

[*] In lieu of Justice Ruben T. Reyes, per Special Order No. 546 dated January 5, 2009.

[1] Rollo, pp. 3-5.

[2] The Office of the Court Administrator (OCA) referred the Complaint to respondent for her Comment in a 1[st] Indorsement dated April 20, 2007, id. at 28.

[3] Sec. 3. Disputable presumptions. --- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(m) That official duty has been regularly performed; x x x

[4] Rollo, pp. 28-30.

[5] Section 10. Completeness of service. --- Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

[6] Rollo, pp. 1-2.

[7] Rollo, p. 34.

[8] Id. at 38-43.

[9] Id. at 47.

[10] Rollo, pp. 48-49.

[11] Guillen v. Nicolas, 360 Phil. 1, 12 (1998).

[12] Rollo, p. 28.

[13] Sec. 12. Duty of court. ---

(a) If commenced by complaint. --- On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss the case outright for being patently without basis or merit and order the release of the accused if in custody.

(b) If commenced by information. --- When the case is commenced by information, or is not dismissed pursuant an order which, together with copies of the affidavits and other evidence submitted by the prosecution, shall require the accused to submit his counter-affidavit and the affidavits of his witnesses as well as any evidence in his behalf, serving copies thereof on the complainant or prosecutor not later than ten (10) days from receipt of said

order. The prosecution may file reply affidavits within ten (10) days after receipt of the counter-affidavits of the defense.

[14] Rollo, p. 46.

[15] *Daiz v. Adason*, 353 Phil. 1, 7 (1998).

[16] *Id.* at 7-8.

[17] *Aguilar v. Dalanao*, 388 Phil. 717, 724 (2000).

[18] *Martinez Sr. v. Paguio*, 442 Phil. 517, 526 (2002); *Aguilar v. Dalanao*, *supra* note 17.

[19] Per verification with the Records Division, OCA-OAS; respondent served as Researcher/Branch Clerk of Court at the RTC Baguio City from June 5, 1986 up to September 3, 1990; she served at the Public Attorney's Office from 1990 to 2004; and took her oath in her present post on February 9, 2004.

[20] See *Daiz v. Adason*, *supra* note 15, at 9.

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