

**CITY PROSECUTION OFFICE OF GENERAL SANTOS CITY,
REPRESENTED BY ANDRES N. LORENZO, JR., 1ST ASST. CITY
PROSECUTOR, EDILBERTO L. JAMORA, 2ND ASST. CITY
PROSECUTOR, MARIE ELLENGRID...**

A.M. No. MTJ-04-1522. June 09, 2004

Ponente: YNARES-SATIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b8a62eb81a6a/>

YNARES-SATIAGO, J.:

In a verified complaint,[1] the City Prosecution Office of General Santos City charged Judge Jose A. Bersales, Presiding Judge of Branch II, Municipal Trial Court in Cities, General Santos City, with grave abuse of power, ignorance of the Rules, obstruction of justice and dishonesty.

On June 13, 2002, a complaint for Illegal Possession of Firearm and Ammunition, docketed as Criminal Case No. 44040-II[2] was filed against Luis Garchitorena before the Municipal Trial Court in Cities, General Santos City, Branch II, presided by respondent Judge.

After conducting preliminary investigation, respondent Judge found probable cause against Garchitorena and forwarded the records of the case to the Office of the City Prosecutor. Meanwhile, the subject firearm, a .45 caliber pistol recovered from Garchitorena, remained under the custody of the National Bureau of Investigation (NBI).

Subsequently, an Information for Illegal Possession of Firearm, docketed as Criminal Case No. 44486-II, was filed against Garchitorena. By inadvertence, however, the same was filed with the MTCC, Branch II (respondent's court), instead of the Regional Trial Court which had jurisdiction over the offense.[3]

On October 11, 2002, respondent Judge directed the NBI to turn over custody of the .45 caliber pistol to him, which the NBI complied with.

Instead of dismissing the case for lack of jurisdiction, respondent Judge conducted another preliminary investigation and dismissed the case on the ground that the subject firearm was inadmissible in evidence since the arrest of the accused, during which the gun was seized, was tainted with constitutional infirmity.

Notwithstanding the Order of respondent Judge, the Prosecution Office refiled the Information for Illegal Possession of Firearm against Garchitorena with the Regional Trial Court of General Santos, Branch 37, where it was docketed as Criminal Case No. 16600.

The prosecution also filed an Information for Direct Assault against Garchitorena with the MTCC of General Santos City, Branch III, docketed as Criminal Case No. 44880-III. Judge Oscar P. Noel, Jr. of the MTCC, Branch III issued a Subpoena Duces Tecum[4] directing Norma Yumang, Branch Clerk of Court of the MTCC, Branch II, to submit the firearm to the Prosecution Office inasmuch as it was evidence in the case for Direct Assault.

Norma Yumang filed a Manifestation[5] stating that the subject firearm was not in her custody because the same

was directly submitted by the NBI to respondent Judge.

Upon learning that the gun was in the possession of respondent Judge, the prosecution sent a letter to him requesting the turn over of the subject firearm to the Prosecution Office. After respondent Judge ignored the letter, Prosecutor Edilberto L. Jamora issued a Subpoena Duces Tecum,[6] addressed to the former reiterating the demand to turn over the subject firearm to the Prosecution Office.

On April 14, 2003,[7] respondent Judge issued an Order requiring Prosecutor Jamora to show cause why he should not be cited for Indirect Contempt for issuing the subpoena against him.

Prosecutor Jamora filed his Answer[8] justifying the issuance of the subpoena and explaining his reasons therefor. At the scheduled hearing on the contempt proceedings on April 24, 2003, Prosecutor Jamora filed a Waiver of Appearance[9] stating that he had to appear before the RTC, Branch 37.

Despite the filing of the foregoing waiver, respondent Judge ordered Prosecutor Jamora's arrest[10] while he was in the middle of a hearing in RTC-Branch 37, causing a disruption of the proceedings therein.[11] Prosecutor Jamora thus verbally moved for the issuance by Judge Eddie R. Rojas, Presiding Judge, RTC-Branch 37, of a 72-hour Temporary Restraining Order, enjoining the implementation of the arrest order. Judge Rojas issued the TRO prayed for and required respondent Judge to appear before him the next day for the hearing on the Injunction.

Respondent Judge, however, failed to appear. Thus, the temporary restraining order was extended to its full term of twenty (20) days.[12]

On April 30, 2003, respondent Judge rendered a Decision[13] finding Prosecutor Jamora guilty of Indirect Contempt.

In their administrative complainant, the Prosecutors of General Santos City pray that respondent Judge be dismissed from the service.

Respondent Judge filed his Answer/Comment[14] praying that the complaint be dismissed. He avers that the issues are still under consideration because Prosecutor Jamora filed a notice of appeal from the Decision finding him liable for Indirect Contempt. Further, he alleges that Prosecutor Jamora was arrested because he disobeyed the Order for him to appear at the scheduled hearing for contempt.

With regard to the .45 caliber handgun of Luis Garchitorena, Jr., who is now deceased,[15] respondent Judge pointed out that the same was now the subject of a Motion to Release[16] filed by Garchitorena's heirs. He received the handgun from the NBI and turned over the same to his Branch Clerk, Norma C. Yumang. When Ms. Yumang received the subpoena issued by Judge Noel to surrender the gun, she became frightened and turned over the same to him. Later, he returned the gun to Yumang and eventually directed its release to Garchitorena's brother.[17] However, he held in abeyance the turn over of said handgun upon the verbal directive of the Court Administrator on account of the pending administrative case against him.

Respondent Judge argues that he refused to comply with the subpoena of Judge Noel because the latter failed to acquire jurisdiction over the person of the accused and the firearm is not one of the essential elements of the crime of Direct Assault.

Both complainants[18] and respondent Judge[19] manifested their willingness to submit the case for resolution on the basis of the pleadings filed.

After evaluation, the Office of the Court Administrator recommended that respondent Judge be ordered to turn over the custody of the .45 caliber pistol to the City Prosecutor's Office and that he be fined the amount of

Twenty Thousand Pesos (P20,000.00) with a stern warning that the commission of a similar offense will be dealt with more severely.

We agree with the findings and recommendation of the OCA.

Indeed, respondent Judge displayed ignorance of the principles of jurisdiction in Criminal Procedure.

Section 20 of the Judiciary Reorganization Act delineates the jurisdiction of Regional Trial Courts in criminal cases thus:

SEC. 20. Jurisdiction in Criminal Cases. – Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall thereafter be exclusively taken cognizance of by the latter.

On the other hand, the jurisdiction of Municipal Trial Courts is explicitly provided by Section 32 thereof:

SEC. 32. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases. – Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise:

(1) Exclusive original jurisdiction over all violations of city or municipal ordinances committed within their respective territorial jurisdictions; and

(2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: Provided, however, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.[20] (Emphasis and italics supplied)

The penalty for illegal possession of a high-powered firearm under the second paragraph of Section 1, P.D. No. 1866, as amended, is prison mayor in its minimum period which has a period of six (6) years and one (1) day to eight (8) years.

Therefore, the case for Illegal Possession on Firearm was beyond the jurisdiction of respondent Judge, and it behooved him to dismiss the same upon the filing of the appropriate Information with the Regional Trial Court of General Santos City, Branch 37.

However, instead of dismissing the case, respondent Judge conducted another preliminary investigation and, in an Order dated October 21, 2002,[21] dismissed the case on the ground that the constitutional rights of the accused were allegedly violated.

Respondent Judge's insistence to conduct another preliminary investigation, coupled with the fact that his order omitted to mention the shooting incident which prompted the arresting officers to seize the firearm from Garchitorena, raises the suspicion that respondent Judge was prompted by less than noble motives in ordering the dismissal of the case.

Furthermore, respondent Judge's undue interest in the handgun is shown by his refusal to surrender custody thereof to the Prosecution Office.

Respondent Judge had no legal authority to take custody of the handgun much less order the direct turn over thereof to him[22] by the NBI. Although it was evidence in the criminal case for Illegal Possession of Firearm, the prosecutor had not offered it as evidence. Hence, it was the prosecution who should have the legal custody and

responsibility of the subject firearm.[23]

Assuming arguendo that the handgun was under the legal custody of the court, still, respondent Judge cannot take possession of the firearm because Rule 136, Section 7 of the Rules of Court states:

SEC. 7. Safekeeping of property. – The clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office. (Emphasis and italics supplied)

Along the same vein, Section E (2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court provides:

All exhibits used as evidence and turned over to the court and before the case/s involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court. (emphasis and italics supplied)

Respondent Judge claims that upon receipt of the gun from the NBI, he turned over custody thereof to his Branch Clerk of Court. However, the record discloses that said gun in fact never passed the office of respondent Judge's Clerk of Court. No less than Norma C. Yumang, the Clerk of Court herself, disclaimed receipt of such firearm.[24] What appears on record is that the handgun was directly turned over by the NBI to respondent Judge on October 15, 2002 pursuant to his Order dated October 11, 2002.[25]

Respondent Judge knew that responsibility for the handgun belonged to the Clerk of Court. Despite such knowledge, he insisted in taking custody thereof. When he completed the preliminary investigation and forwarded his findings to the City Prosecution Office, he lost jurisdiction over the case and, necessarily, the firearm. Respondent Judge took advantage of his office in retaining possession of the .45 caliber pistol. With his obstinate refusal to turn over the gun, he effectively prevented the prosecution of accused Garchitorena in Criminal Case No. 16600, which constitutes a clear obstruction of justice.[26]

The role of a judge in relation to those who appear before his court must be one of temperance, patience and courtesy.[27] A judge who is commanded at all times to be mindful of his high calling and his mission as a dispassionate and impartial arbiter of justice[28] is expected to be "a cerebral man who deliberately holds in check the tug and pull of purely personal preferences which he shares with his fellow mortals." [29]

In fine, respondent Judge not only failed to perform his judicial duties in accordance with the rules, he also acted in disregard of the law and controlling jurisprudence.

WHEREFORE, in view of the foregoing, respondent Judge Jose A. Bersales of the Municipal Trial Court in Cities of General Santos City, Branch II, is declared guilty of misconduct and is FINED the amount of Twenty Thousand Pesos (P20,000.00). He is DIRECTED to turn over the custody of the .45 caliber pistol to the City Prosecutor's Office of General Santos City for the proper disposition thereof. Finally, he is STERNLY WARNED that a repetition of similar acts will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 1-9.

[2] Id., p. 69.

- [3] Id., p. 44.
- [4] Id., p. 16.
- [5] Id., p. 17.
- [6] Id., p. 20.
- [7] Id., pp. 21-22.
- [8] Id., pp. 23-26.
- [9] Id., p. 27.
- [10] Id., pp. 31-33.
- [11] Id., p. 126.
- [12] Id., p. 36.
- [13] Id., pp. 39-63.
- [14] Id., pp. 128-134.
- [15] Id., p. 139.
- [16] Id., p. 174.
- [17] Id., pp. 187-188.
- [18] Id., p. 204.
- [19] Id., p. 168.
- [20] As amended by R.A. No. 7691.
- [21] Rollo, pp. 72-74.
- [22] Id., p. 71.
- [23] OCA v. Sanchez, A.M. No. RTJ-99-1486, 26 June 2001, 359 SCRA 577.
- [24] Rollo, p. 17.
- [25] Id., p. 71.
- [26] OCA v. Sanchez, *supra*.
- [27] See Delgra, Jr. v. Gonzales, G.R. No. L-24981, 30 June 1970, 31 SCRA 237; Laguio v. Diaz, A.M. No. (3167-V) P-2195, 29 May 1981, 104 SCRA 689; Retuya v. Equipilag, A.M. No. 1431-MJ, 16 July 1979, 91 SCRA 416.
- [28] Royeca v. Animas, 162 Phil. 651 [1976].
- [29] Azucena v. Munoz, 144 Phil. 463 [1970].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.