

NENA TORDESILLAS, COMPLAINANT, VS. DEPUTY SHERIFF HUMBERTO BASCO, CITY COURT, MANILA, RESPONDENT.

Adm. Mat. No. P-2363. October 30, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Complainant Nena Tordesillas charges Deputy Sheriff Humberto Basco with "robbery, falsification of official document, anti-graft and corrupt practices acts, serious misconduct, gross ignorance of the law" and robbery.

After respondent Basco submitted his comment, the case was referred to Executive Judge Antonio Padua Paredes of the city court of Manila for investigation, report and recommendation. After due investigation, Judge Paredes found respondent to have committed "grave misconduct coupled with gross negligence, and to have failed to comply with the mandates of the warrant for the seizure of personal property in Civil Case No. 044361, entitled: 'Commercial Credit Corporation of Makati, plaintiff, vs. Mercedes Salcedo, et al., defendants' issued by Judge Archimedes C. de Guzman of Branch VIII of the City Court of Manila, as provided in Sections 3, 4 and 6 of Rule 60 of the Rules of Court amounting to misconduct", and strongly recommends respondent's dismissal from service.

In her complaint, Nene Tordesillas alleged:

"1. That on January 8, 1980, at or about 11:30 in the morning while my car, a Mercedes Benz 1968 Model, bearing Plate No. L-HG-841, was parked in front of the Philippine Christian College, certain persons who were later identified as Humberto Basco and Salvacion M. Manalo together with other several persons, conspiring and confederating with one another, forcibly and illegally broke open the hood and doors of my car and then drove it away after forcing and breaking likewise the ignition switch lock and the steering wheel lock of said car;

"2. That as a result of such unlawful and illegal acts, I lost among other things the following items inside said car, to wit: (1) one car cassette/radio AM/FM set, Pioneer brand, valued at P1,800.00; Sony portable cassette tape recorder with AM/FM Multiplex valued at P2,200.00; Nikon Camera, set of lenses, flash units, tripod, other accessories, valued at P11,500.00; one lady samsonite overnight bag valued at P480.00; one GP ladies watch (gold) valued at P5,500.00; one Seiko ladies quartz watch, price P900.00; two bracelets, silver, price P1,000.00; two rings of gold and emerald, price P2,000.00; one ring of silver and ruby, price P1,200.00; sunglasses, two pairs, valued at P550.00; two bottles of perfumes, price P450.00; clothing materials valued at P300.00; and many others, which designation thereof shall be accordingly identified;

"3. That the above incident happened along General Malvar St., Malate, Manila, in front of the Philippine Christian College."

On March 3, 1980, respondent Basco submitted the following explanation:

"1. On January 8, 1980, under and by virtue of the Warrant of Seizure issued in Civil Case No.044361, City Court of Manila, Br. VIII, entitled 'Commercial Credit Corporation vs. Mercedes Salcedo, Edward Salcedo and

John Doe (copy whereof attached as Annex I hereof) I effected the seizure of a motor vehicle, Mercedes Benz, object thereof;

"2. The brief self-explanatory account of my seizure proceedings is contained in the Sheriff's Return dated January 8, 1980 (copy whereof attached as Annex 2 hereof);

"3. The complained seizure is a justifiable regular and obligatory act directed by and under the Court order (Annex 1) and undertaken by the plaintiff's representatives, agents and counsel with my assistance. Incidentally, defendant Mercedes Salcedo herself assisted or otherwise was instrumental in the location, identification and seizure of the car;

"4. The forcible taking of the object motor vehicle is a necessary and/or incidental act of the seizure proceedings, and which is grounded on a provision of law: Rule 135, Sec. 6, Rules of Court - 'When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules;

"5. As to the itemized articles allegedly lost (paragraph 2 of the complaint) I deny having a part and liability therein. Moreover, I did not see these articles within or inside the object motor vehicle prior to and after the seizure thereof. Complainant TORDESILLAS is making a sweeping generalization of the alleged losses without evidence and with a prejudiced view;

"6. The seized motor vehicle has been viewed and inspected by the Honorable Judge Archimedes C. de Guzman who issued the Seizure Order, and continues in Sheriff's custody pending resolution and determination of legal matters brought up by the parties in Court.

"In view of all foregoing, I hereby submit that the complaint of NENA TORDESILLAS be dismissed."

Executive Judge Paredes, in his report, finds the vehicle seized to be different from the one described in the warrant of seizure of personal property. The property seized bore the following descriptions:

"Make: One (1) Mercedes Benz

Model: 1967

Type: 4 door

Motor No.: 121 940 10 032499

Serial No.: 11001050

File No.: 4G 10724

Plate No.: L - FW 899."

On the other hand, the motor vehicle described in the warrant was:

"Make: Mercedes Benz

Model: 1968

Type: 4 - door sedan

Motor No.: 121-940-10-060753

File No.: 4G-13058

Plate No.: L-HG-841."

Thus, Judge Paredes reports that ?

"x x x The patent dissimilarity of the plate numbers alone was more than enough to cause respondent to exercise extreme care and caution in implementing the warrant. But he testified that: the plate number was not important to him, he could not remember if they were the same, his interest was not in the plate number which could be changed any time, the body number was no longer necessary, and the serial number and filing number were the same as indicated in the warrant and as told to him by Atty. Manalo, plaintiff's counsel, and he believed her (T.S.N., March 27, 1981, p. 19).

"Under Sections 3 and 4, Rule 60, of the Rules of Court, it is the personal duty and responsibility of respondent to implement the warrant. But in paragraph No. 3 of his reply to complainant's affidavit dated March 11, 1980, the seizure was 'undertaken by the plaintiff's representatives, agents and counsel with my assistance' (Rec., p. 13). This shows that he had delegated his primary role in the seizure, in violation of the warrant that was exclusively addressed to the Sheriff of Manila and to respondent as his assigned duty. The foregoing is serious mis-conduct indeed, coupled with gross negligence.

"Respondent affirmed that it was his duty to conduct an inventory of the items found in the vehicle seized (T.S.N., March 27, 1981, p. 22). No one, least of all respondent, would deny that such inventory should be made immediately upon seizure of the property. The seizure was effected on January 8, 1980, but it was only on January 10, 1980, or two days later, after the vehicle was taken from the custody of plaintiff, that respondent deputy sheriff made his 'physical inventory' of the vehicle which he captioned 'Sheriff's Inventory' (Exhibit 'E'). Compared with the observations of Atty. Domingo Lopez II, complainant's counsel, filed on the same date with the Manila Sheriff's Office (Exhibit 'F'), respondent's inventory, among other things, did not contain any finding as to the condition of the car's body, and was clearly incomplete.

"The warrant also ordered respondent deputy sheriff to keep the property 'in your possession for five (5) days and at the expiration of said period to deliver it to x x x plaintiff'. This order was not followed by respondent who upon seizure turned over the vehicle to plaintiff allegedly 'for the best interest of the property, so that it could be guarded for safe-keeping pending its surrender to plaintiff which had interest in it' (T.S.N., March 27, 1981, p. 21). The alleged guarding by Alfredo Villegas a sheriff guard assigned to watch the car while it was in the possession of plaintiff proved ineffectual as the former only watched for eight (8) hours a day, leaving the car in plaintiff's possession without sheriff's guard for 16 hours (T.S.N., April 14, 1981, p. 15). The result is the claim that the car sustained damages (Exhibit 'F').

"It would appear from respondent's actuation that he had usurped judicial authority since he had no prior court permission to forthwith deliver the vehicle to plaintiff (T.S.N., March 27, 1981, p. 22). His reason that he could not take the vehicle to the sheriff's bodega, where it should have been taken (T.S.N., June 16, 1980, p. 6), because there was no longer any space (T.S.N., March 27, 1981, p. 6), fails to convince the undersigned. After complainant complained to the acting chief of the Office of the City Sheriff of Manila, the latter ordered respondent to return the car to the sheriff's office, which was done on January 10, 1980 (T.S.N., June 16, 1980, pp. 9-13). This goes to show that respondent's actuation was without the sanction of his office. And the car could also have been deposited in the Compound of the Boy Scouts of the Philippines on January 8, 1980, where in fact it was deposited on January 10, 1980, after it was removed from plaintiff's possession and brought to the Sheriff's Office (T.S.N., March 27, 1981, p. 27). The fact that respondent had overlooked the Boy Scouts Compound where surely no controversy would arise, not only reveals his desire to help plaintiff save on storage expenses (T.S.N., March 27, 1981, p. 27), but also exposes his undue interest in plaintiff's cause. The foregoing facts prove that respondent violated the warrant as well as the pertinent provisions of the Rules of Court.

"Records show that herein respondent is also the respondent in Administrative Matter No. P-2364, entitled: 'Philippine Trial Lawyers Association Incorporated, Complainant, vs. Humberto Basco, Respondent', which

was decided on October 27, 1980, and in which he was found 'guilty of serious misconduct in office' and ordered 'to pay a fine equivalent to two (2) months salary, with a warning that a repetition of the same or the same analogous act will be dealt with more severely.' Further, there is also pending against him Administrative Matter No. P-2329, entitled 'Virgilio S. Asis, Complainant, vs. Humberto Basco, Respondent.' for engaging in the practice of law.

"His personal record shows that respondent has been in the service for 10 to 12 years as Assistant Legal Officer of the City Sheriff of Manila and as deputy sheriff; being a lawyer, he is deemed knowledgeable in his field of work.

"In view of the foregoing, the undersigned finds respondent Humberto Basco to have committed grave misconduct coupled with gross negligence, and to have failed to comply with the mandates of the Warrant for the Seizure of Personal Property in Civil Case No. 044361 entitled 'Commercial credit Corporation of Makati, Plaintiff, versus Mercedes Salcedo, et al., Defendants' issued by Judge Archimedes C. de Guzman of Branch VIII of the City Court of Manila, as provided in Sections 3, 4 and 6, of Rule 60, of the Rules of Court, amounting to gross misconduct.

"Considering that the second count could be considered as aggravating circumstances (C.S.C., MC No. 8, June 26, 1979), as well as respondent's aforesaid length of service and his recent sentence in Administrative Matter No. P-2364, not to include his pending case, Administrative Matter No. P-2329, the undersigned strongly recommends his dismissal from the service."

The Court Administrator agrees with the fore-going findings of Judge Paredes which WE likewise approve.

WHEREFORE, FINDING THE RESPONDENT DEPUTY SHERIFF HUMBERTO BASCO OF THE CITY COURT OF MANILA GUILTY OF SERIOUS MISCONDUCT IN OFFICE FOR THE SECOND TIME, HE IS HEREBY DISMISSED FROM THE SERVICE WITH FORFEITURE OF ALL RETIREMENT BENEFITS AND WITH PREJUDICE TO REINSTATEMENT TO ANY POSITION IN THE NATIONAL OR LOCAL GOVERNMENT, INCLUDING ITS AGENCIES AND INSTRUMENTALITIES, OR GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS.

LET A COPY OF THIS DECISION BE ATTACHED TO HIS PERSONAL RECORD.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

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