

SALVACION E. MARCAYDA, COMPLAINANT, VS. JUSTINIANO P. NAZ, RESPONDENT.

Administrative Case No. 1856. October 28, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This is a revival of the immorality charge against respondent Justiniano P. Naz. Salvacion E. Marcayda in a handwritten letter filed in this Court on April 19, 1977 asked that Naz's oath-taking as a member of the bar (after having flunked twice) be withheld pending negotiations for the support of his alleged child begotten with Salvacion.

Naz in his answer of April 27, 1977 denied the paternity of the child. He alleged that the complaint was pure harassment and blackmail. He said that Salvacion could have filed an administrative complaint with the Department of Education and Culture since he was employed in the Legaspi branch of that Office but she never filed any such complaint.

Accompanying his answer was an affidavit wherein Naz requested that, because clearance could not be given him to take the oath on April 29, 1977 due to Salvacion's complaint, he be allowed to take the oath but his signing of the Roll of Attorneys be deferred pending resolution of Salvacion's complaint.

On the following day, April 28, 1977, Naz and Salvacion, both 47, natives of Camalig, Albay, executed in Manila a notarized agreement before lawyer Braulio R. G. Tansinsin wherein Naz admitted that he had an affair with Salvacion in 1964 as a result of which a boy named Rey E. Marcayda was born on January 8, 1965, (should be March 8, 1965, as shown in Exhibit 2). Naz was a married man. Salvacion was married to Primo Marcayda who died of tuberculosis on July 5, 1965 (Exh. 1).

Naz in that agreement bound himself to pay Salvacion for Rey's support (1) back support of P2,000 on or before December 25, 1977 and another P2,000 on or before December 25, 1978 and (2) P100 or its dollar equivalent in advance within the first five days of every month, starting May, 1977 until Rey reached the age of twenty-one.

Because of that public instrument admitting paternity and the promise to support the adulterous child, Salvacion on that same date, April 28, 1977, withdrew her complaint filed in this Court to withhold the oath-taking of Naz on the ground of immorality.

The withdrawal document was also executed before Notary Tansinsin. It is document No. 628 of his notarial book while the document of acknowledgment and support is No. 629.

The result of these last minute maneuvers was this Court's resolution of April 28, 1977 allowing Naz to take his oath by reason of Salvacion's withdrawal of her complaint (SBC-582). He took his oath on April 29, 1977. But Naz did not live up to his promise to give support.

In a verified complaint dated December 23, 1977 Salvacion asked for the reopening of the administrative case.

She alleged that she withdrew the complaint so that Naz would have a higher salary and would be in a better position to support Rey. He is now an incumbent legal officer of Region V of the Ministry of Education and Culture in Legaspi City, with an annual salary of P17,724.

She testified that after Rey's birth Naz gave her forty pesos a month for six months. After she withdrew her complaint, Naz gave her one hundred pesos for May, 1977. As already stated, he did not comply with his commitment in the notarial agreement of support which was the basis of the withdrawal of the immorality complaint against him.

Naz in his comment on the complaint and in his testimony in the Solicitor General's office declared that Rey was not his son. Rey's 1965 birth certificate shows that he was born in wedlock to Salvacion and her husband, Primo (Exh. 2). He alleged that he was "coerced" to sign the agreement of support. The complaint was like "an Armalite trained on the head of the respondent".

We hold that, as noted by the Solicitor General, Naz is not guilty of gross immorality. He should not be disbarred because he had admitted the paternity of Rey in a public document and agreed to support him. This circumstance rendered his immorality not so gross and scandalous. (*Arciga vs. Maniwang*, Adm. Case No. 1608, August 14, 1981, 106 SCRA 591).

The agreement of support was basis of the withdrawal of the 1977 complaint against him. The eleventh-hour withdrawal paved the way for his oath-taking. He cannot be allowed to repudiate that public document on the ground of supposed coercion.

Respondent Naz's stand of not giving any value to that public document shows a certain unscrupulousness unbecoming a member of a noble profession. It is tantamount to self-stultification. His attitude is highly censurable. He wants to make a mockery of the proceedings in this Court by making it appear that he lied brazenly about the filiation of Rey Marceyda just to facilitate his admission to the bar. In his oath, he swore to do no falsehood.

The remedy of complainant Marceyda is a civil action for support on the basis of the agreement of support which is irrevocably binding on Naz. She could also file an administrative complaint against him with the Ministry of Education and Culture which could require him to give support to the child, Rey (See sec. 36, Civil Service Decree, P. D. No. 807).

WHEREFORE, respondent Naz is severely reprimanded for his attempt to nullify the notarial agreement to support a child whose filiation he had admitted. A copy of this resolution should be attached to his record in the Bar Confidant's office.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

Makasiar, J., (Chairman), he dissent. He should be disbarred for immorality and his brazen repudiation of a notarial deed wherein he committed adultery with a married woman even while he himself now is married.

De Castro, J., on leave.

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