

JOSE G. ARELLANO, COMPLAINANT, VS. JESUS AGUSTIN AND EDGAR CORDERO, RESPONDENTS.

A.M. No. P-941. July 21, 1978

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This is a complaint filed by Jose G. Arellano against Jesus Agustin, clerk of court, and Edgar Cordero, deputy sheriff, both of the Circuit Criminal Court, Seventh Judicial District with station in Pasig, province of Rizal, for "Dishonesty, Grave Misconduct and Falsification of Public Documents."

On the basis of the allegations of the complainant and the answer filed by respondent Jesus Agustin, the following facts are duly established:[1]

Jose Arellano filed with the Circuit Criminal Court, Seventh Judicial District in Pasig, presided by Hon. Onofre Villaluz, a complaint docketed on January 11, 1974 as CCC-VII- Prel. Inv. 72-Rizal, entitled "Jose G. Arellano, complainant, versus Pedro Nieva, Jr., respondent." The complaint charged Pedro E. Nieva, Jr. with a violation of the Anti-Graft and Corrupt Practices Act (R.A. 3019). Judge Onofre A. Villaluz commenced the preliminary investigation of said complaint but the proceedings were suspended by virtue of a "Temporary Restraining Order" issued by this Court on October 31, 1974 in G.R. No. L-39525 entitled "Pedro E. Nieva, Jr. versus Hon. Onofre A. Villaluz, et al." (p. 9, rollo) While this complaint for violation of the Anti-Graft and Corrupt Practices Act was pending before Judge Villaluz, Pedro Nieva, Jr., who was then auditor of the Development Bank of the Philippines applied for compulsory retirement with the Commission on Audit. To secure his retirement benefits, Pedro Nieva, Jr. had to submit the required clearances. For this purpose, he sought a clearance from the Circuit Criminal Court of Pasig, Rizal. On February 20, 1975, a certification was issued by respondent Edgar Cordero which reads as follows:

"TO WHOM IT MAY CONCERN:

"This is to certify that Mr. PEDRO E. NIEVA, JR. had no pending criminal information (case) against him, for any crime, in this court.

"Issued at his request, this 20th day of February, 1975.

JESUS R. AGUSTIN
Clerk of Court

By:

(Sgd.) EDGAR M. CORDERO
Spl. Deputy Clerk of Court"
(p. 3, rollo)

In addition to the above-quoted clearance, another certification was issued from the same court signed by respondent Jesus Agustin on March 4, 1975 to this effect:

"TO WHOM IT MAY CONCERN:

"This is to certify that Mr. Pedro E. Nieva, Jr. has no pending criminal information (case) against him for any crime, in this Court.

Issued at his request, this 4th day of March, 1975.

(Sgd.) JESUS R. AGUSTIN
Clerk of Court"
(p. 4, rollo)

On March 26, 1975, respondent Cordero, upon request of the counsel of complainant Arellano, wrote the following communication by way of clarification of the clearance issued by him, to wit:

"Atty. Teodoro San Juan
Citizens Legal Assistance Office
Department of Justice
Manila

Dear Sir:

This is with reference to your inquiry this afternoon brought to my attention by Miss Natalia B. Panaligan, this office, concerning the certification that I have issued at the instance of Atty. Ernesto Pangalangan to the effect that Mr. Pedro Nieva has no pending criminal case before this Court. While it is true that Mr. Pedro Nieva has no criminal information against him, a clarification, however, that said Mr. Pedro Nieva has a pending preliminary investigation case before this Court entitled "Jose Arellano, complainant, versus Pedro Nieva, et al.", respondents, for violation of the Anti-Graft and Corrupt Practices (RA 3019), docketed as CCC-VII-Prel. Inv. No. 72-Rizal, which is being conducted by this Court under Section 13, Rule 112 of the New Rules of Court. I attest that this qualification should be incorporated in the said certification obtained from me by Atty. Pangalangan.

Very truly yours,

(Sgd.) EDGAR CORDERO
Special Deputy Clerk of Court"
(p. 5, rollo)

On March 13, 1975, the retirement of Pedro E. Nieva, Jr. was approved and he was paid his retirement benefits in the total amount of P193,428.78 under check No. 1404615 dated March 13, 1975. (p. 5, rollo)

Jose Arellano now contends that by reason of the false certifications issued by the two respondents, Pedro Nieva, Jr. succeeded in collecting his retirement benefits in violation of Sec. 12, R.A. 3019 which provides:

"SEC. 12. Termination of Office. - No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under this Act or under the provisions of the Revised Penal Code on bribery."

In their defense respondents disclaim any falsity in the certifications issued by them, and they give the following explanation:

"2. That the above certification stands uncontradicted or unrefuted by any other record or proof that there was no pending criminal information (case) against said Pedro E. Nieva, Jr. in the Circuit Criminal Court inasmuch as the filing of a complaint directly with the Circuit Criminal Court for purposes of pre-liminary investigation pursuant to and in accordance with Section 13, Rule 112 of the Revised Rules of Court does not necessarily amount to or construed as a 'criminal information (case)' already properly filed or lodged with said Court. This is so because upon compliance with the procedure outlined in Section 13 of Rule 112, and 'should he (Honorable Judge of the CCC) find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information'; (Underscorings and matters in parenthesis supplied; Francisco's Crim. Proc. 1969 Second Edition, p. 323)

"3. That it is evident, therefore, from the aforecited provision of law that the complaint filed for purposes of preliminary examination and investigation is apart, distinct and entirely different from the criminal information (case) which may later on be filed by the fiscal since 'the phrase 'Upon complaint or information filed directly with the Court of First Instance, the judge thereof shall conduct a preliminary investigation in the manner provided in the following sections' in the Old Rules of Court (Sec. 4, Rule 108), has been changed to 'Upon complaint filed directly with the Court of First Instance,' x x x; (Underscoring supplied; Francisco's *ibid.*, p. 322)

"4. That the correctness of respondent's certification that there was actually no criminal information (case) filed against the respondent in 'Jose G. Arellano vs. Pedro E. Nieva, Jr., et al.,' docketed as CCC-WII-Prel. Inv. 72-Rizal, is further strengthened by the fact that the phrase 'and try the case on the merits' in the Old Rules of Court, has been changed to 'and thereafter refer the case to the fiscal for the filing of the corresponding information' in the present provision (Sec. 13, Rule 112, Revised Rules of Court; Francisco's *ibid.*, *supra*), thus

the mere filing of a complaint with the Circuit Criminal Court for purposes of preliminary investigation under the present Rules does not legally confer upon or vest in aforesaid Court the power to 'try the case on the merits' should there be a reasonable ground to believe that the defendant has committed the crime charged; (Francisco's *ibid.*, p. 322; Moran's Comments on the Rules of Court, 1957 Ed., Vol. 2, p. 667.) There is yet a need to file the corresponding information and so far there has been no 'pending criminal information (case)' against said Pedro E. Nieva, Jr. in said Court." (pp. 12-13, rollo)

For purposes of this Administrative Case there is no necessity to give a discourse on the alleged distinctions between a "complaint" filed for purposes of a preliminary investigation with the Circuit Criminal Court and an "Information" filed before said court by a prosecuting fiscal.

What is determinative of Our action in this case is the existence of Section 12, R.A. 3019 to the effect that the retirement or resignation of a public officer is not to be allowed while there is pending "an investigation, criminal or administrative, or pending a prosecution against him" for any offense under R.A. 3019 or under the provisions of the Revised Penal Code on bribery, and the undisputed fact that respondents herein were well aware of the requirements of the law at the time they issued the clearances in question.

Respondent Jesus Agustin is a member of the Bar while respondent Edgar Cordero is a fourth year college student. In the case of Cordero, he was not even qualified to issue the clearance in question considering that he is a mere deputy sheriff in that court and holds no official designation to act as "special deputy clerk of court" which he nonetheless affixed to his signature.

When respondents were asked to issue a clearance in favor of Pedro Nieva, Jr., they were duty bound to state and reflect on the documents to be issued by them a true and faithful narration of facts existing at the time, and that narration necessarily had to include a statement that as of the date of the respective clearances, a complaint had been filed by Jose Arellano against Pedro E. Nieva, Jr. for a violation of the Anti-Graft and Corrupt Practices Act which was pending preliminary investigation by the court presided by Judge Onofre Villaluz. With the non-disclosure of that fact respondents gave a false impression to the government official to whom these clearances were presented that there was no pending investigation against the applicant for retirement as provided for in Sec. 12 of R.A. 3019.

The acts committed by respondents constitute grave misconduct in office which would justify dismissal from the service. If We are disposed to impose a lighter penalty, it is simply because the personal records of respondents show that this is their first offense, that Jesus Agustin has about 22 years of service in the government while Cordero has around 10 years to his credit; furthermore, there is nothing in the record to show the final outcome of the complaint filed by Jose Arellano vs. Pedro Nieva, Jr.

IN VIEW OF THE FOREGOING, We find Jesus Agustin and Edgar Cordero guilty of grave misconduct in office and We suspend each of them from office for a period of SIX months without pay,[*] with a warning of a graver penalty for any succeeding misconduct in office.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] Respondent Edgar Cordero did not file any comment in his behalf; however, We consider Agustin's comment as applicable likewise to his co-respondent Cordero.

[*] In *Andres Suck vs. Rolando Diaz*, Adm. Matter No. P-147, August 29, 1975, the Court ordered the suspension

of respondent Rolando Diaz for six months for "gross neglect of duty."

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