

DIRECTOR EDMUNDO S. ANCOG, COMPLAINANT, VS. JUDGE JOSE Z. TAN, RESPONDENT.

A.M. No. MTJ-93-753. October 12, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In a letter dated 14 January 1993, Director Edmundo S. Ancog of the Human Rights Commission charged respondent Judge Jose Z. Tan of the Municipal Trial Court (MTC) of Catbalogan, Samar, with gross ignorance of the law in issuing an order for the arrest of one Joel Navarete on the basis of hearsay evidence and in violation of Section 6(b), Rule 112 of the Rules of Court, as a consequence of which Joel Navarete was arrested and incarcerated for twenty-two (22) days.

The records disclose that on 14 March 1991, P/Capt. Manuel B. Calbes, Chief of Police of Catbalogan, Samar, filed with the MTC of Catbalogan a complaint for estafa against Lito Mirelles, Joel Navarete, and a certain Jun. Subject matter thereof is a tricycle valued at P9,500.00 belonging to Joselito Mate which was allegedly entrusted by him to Lito Mirelles. The latter, allegedly in conspiracy with his co-accused, failed to return it to the owner despite demand. The complaint was supported by the affidavit of Joselito Mate which was subscribed and sworn to before the respondent Judge on 14 March 1991. Joselito alleged therein that he is the owner of the tricycle; that he had been allowing Lito Mirelles to drive it on boundary basis; that on 11 March 1991, Lito got the tricycle to be returned at 7:00 o'clock in the evening; that unfortunately, Lito did not; that Joselito looked for and found the tricycle, already without wheels, near the house of Joel Navarete in barangay Guinsorongan; and that Lito's wife told him that Joel and Jun were Lito's companions when Lito removed the wheels of the tricycle.

After having found probable cause against the accused, the respondent Judge issued on 14 March 1991 a warrant of arrest against them and fixed their bailbond at P4,000.00 each.

On 15 March 1991, accused Joel Navarete was arrested and detained.

On 26 March 1991, Atty. Ediberto G. Morales, Public Attorney III of the Catbalogan District Office of the Public Attorneys Office, filed on behalf of Joel Navarete a motion to quash the warrant of arrest on the ground that it issued on the basis of the hearsay statement of Joselito Mate that he was told by the wife of Lito Mirelles that Lito, together with Joel Navarete and a certain Jun, removed the tires of the tricycle; hence, the warrant of arrest was issued in violation of Section 6(b), Rule 112 of the 1985 Rules on Criminal Procedure.

In his Order of 3 April 1991, the respondent Judge dismissed the case against Joel Navarete and ordered his immediate release. The order is based on the following observations:

"Upon scrutiny of the records of the case, the Court has found that the basis for the inclusion of said accused in the complaint is on the sworn statement of complainant Joselito Mate wherein it is alleged that said accused had participated in the dismantling of the wheels of the tricycle owned by said complainant as per information relayed to him by the wife of one Lito Mirelles.

The records do not reveal that said wife of Lito Mirelles had executed an affidavit to prove the fact of accused's alleged participation in removing the wheels of the tricycle."

In his 2nd Indorsement dated 16 March 1993, submitted in compliance with our Resolution of 22 February 1993 requiring him to comment on the complaint, the respondent Judge "does not deny to have inadvertently issued the warrant of arrest against accused Joel Navarete." He alleges, however, that:

"In the preliminary examination conducted by respondent on the persons of government witnesses, respondent was at first of the honest impression that accused Joel Navarete was also involved in the commission of the crime since the tricycle, subject of the case, was recovered near his house at Brgy. Guinsorongan, Catbalogan, Samar, with its wheels already removed and there existed a strong probability that the wheels of the tricycle were removed by accused Joel Navarete as pointed out in the testimonies of government witnesses.

If ever there was a mistake in the issuance of the warrant of arrest, the same was an honest one and there was no intention on respondent's part of committing such a wrong. As a matter of fact, after realizing to have committed a mistake, respondent had to order the dismissal of the case against Joel Navarete. This is borne out by the records of the case.

Respondent profoundly regrets for having issued the wrong order that had caused the detention of Joel Navarete. Due, perhaps, to respondent's preoccupation with his other Court duties since he is assigned to a busy court, he might have overlooked the deficiency of the evidence against accused Joel Navarete."

He then begs for the indulgence of this Court and "promises to avoid repeating the same act and to be more careful in his official actuations" and informs the Court that "he is about to apply for disability retirement considering that this is his 19th year in the judiciary and he is now undergoing dialysis due to renal failure."

In his 5 July 1993 reply to the comment which he submitted in compliance with the Resolution of 3 May 1993, the complainant draws our attention to the admission made by the respondent in his comment that he (respondent) issued the warrant of arrest on the basis of his impression that Joel was also involved in the crime and submits that Rule 112 of the Rules of Court is so clear that it does not allow mere personal impressions. The complainant contends that the respondent should have conducted searching questions and answers.

On 27 July 1993, upon recommendation of the Office of the Court Administrator, this Court approved respondent's application for disability retirement under R.A. No. 910, as amended by R.A. No. 5095 and P.D. No. 1438, effective upon approval, it appearing that respondent, who is over 62 years of age with more than 21 years of government service, "is suffering from Chronic Renal Failure, end stage secondary to bilateral staghorn calculus" and that Dr. Raymundo Reyes, Medical Officer IV, with the concurrence of Dr. Carmen C. Valero, Director II, and Dr. Cecilia C. Villegas, Director I, of this Court's Clinic recommended that he "be retired under a permanent and total disability." However, the payment of the money value of his benefits was ordered held in abeyance in view of the pendency of this complaint.

On 18 August 1993, respondent filed a motion for the early resolution of this case.

On 30 August 1993, we referred this case to the Office of the Court Administrator for appropriate evaluation, report, and recommendation.

In the Memorandum of 9 September 1993, the Office of the Court Administrator recommends that the respondent Judge "be fined in the amount of P10,000.00 to be deducted from his terminal leave pay, it appearing that his application for disability retirement (classified as permanent and total disability) was approved on July 27, 1993 in A.M. No. 8090-Ret., but the payment of the money value of his benefits was held in abeyance in view of the pendency of this instant administrative case." In support of its recommendation for the imposition of the above

penalty, the Office of the Court Administrator opined that:

"The main thrust of this complaint is respondent's failure to observe his duty under Section 6(b), Rule 112 of the Rules on Criminal Procedure, as a consequence of which Joel Navarete was incarcerated. He was released after 22 days when respondent's error was brought to his attention. There is no allegation of malice in the issuance of the warrant for his arrest, nor allegations that the said accused was totally innocent of the crime charged. On the other hand, had the wife of accused Mate been presented before respondent during the preliminary investigation, this complaint would have no leg to stand on. Thus, the extreme penalty for the deprivation of the liberty of the subject person may not be imposed upon respondent."

We shall consider the respondent Judge's motion for early resolution as a motion to decide the case on the basis of the pleadings. Indeed, the facts in this case are simple and uncomplicated. Respondent Judge openly admits that he "inadvertently issued the warrant of arrest" or "committed a mistake" in issuing it and that such issuance was based on his "honest impression" that accused Joel Navarete "was also involved in the commission of the crime."

We see here a clear disregard by the respondent Judge of Section 6(b), Rule 112 of the Revised Rules of Court which provides:

"SEC. 6. When warrant of arrest may issue. --

x x x

(b) By the Municipal Trial court. -- If the municipal trial judge conducting the preliminary investigation is satisfied after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest."

While it may be true that his Order of 14 March 1991 made mention of the "examination of the complainant and his lone witness in the form of searching questions and answers," yet his 2nd Indorsement of 16 March 1993, speaks only of the "preliminary examination conducted x x x on the person of government witnesses." He did not attach to the 2nd Indorsement a copy of the examination in writing and under oath of the complainant and his witness as required by the aforequoted paragraph (b) of Section 6, Rule 112. In the light of his admission of "inadvertence" or "mistake" in the issuance of the arrest warrant, it is evident that he did not actually conduct such an examination. If one had been made, he would have attached a copy thereof to his compliance. What seems clear to us is that the respondent Judge merely relied on the sworn statement of the complainant, Joselito Mate, which was subscribed and sworn to before him. That was not enough, for said sworn statement, although in "question and answer" form, was taken by Patrolman Jose Marlon Refuncion of the Catbalogan Police Station with the questions being propounded by the latter; it is obvious therefrom that Joselito did not see Joel Navarete and his co-accused remove the wheels of the tricycle. Joselito was merely informed by the wife of Lito Mirelles -- the principal accused to whom the tricycle was entrusted -- that Joel and one Jun were with Lito when the latter removed the wheels. The wife of Lito did not execute any sworn statement and was not examined by the respondent Judge. Since it is clear from the face of Joselito's sworn statement that there is nothing against Joel except the alleged statement of the wife of Lito -- which is obviously hearsay -- the respondent Judge should not have issued the warrant of arrest. Indeed, the sworn statement of Joselito establishes no probable cause against Joel Navarete. That none exists was frankly admitted by the respondent Judge when he issued the Order of 3 April 1991 dismissing the case against Joel Navarete and ordering his immediate release from detention. To us, however, the error or mistake in the determination that there was probable cause which is judgmental and which, in the absence of grave abuse of discretion or malice, may not necessarily give rise to disciplinary action is overshadowed by the deliberate disregard of the procedure laid down in the Rules regarding the issuance of a warrant of arrest. Considering that such an act deprives a person of the right to liberty solemnly guaranteed by the

Bill of Rights, every Judge should strictly follow the procedure for its issuance, lest by his act or omission, the court would become the violator instead of the protector of the Bill of Rights.

The administrative liability then of the respondent Judge for ignorance of law is beyond dispute. We do not agree with the implied suggestion of the Office of the Court Administrator that such liability may be mitigated by the absence of any allegation in the complaint that accused Joel Navarete was totally innocent of the crime charged for he is presumed innocent until the contrary is proved by the prosecution. Nor do we agree with it that "had the wife of accused Mate been presented before respondent during the preliminary investigation, this complaint would have no leg to stand on." In the first place, Mate is not an accused in the estafa case but the complainant. The wife referred to is the wife of accused Lito Mirelles who, however, cannot testify against her husband without his consent. (Section 22, Rule 130, Revised Rules of Court).

WHEREFORE, for ignorance of the law governing the issuance of a warrant of arrest, the Court hereby imposes upon respondent Judge JOSE Z. TAN a fine of Ten Thousand Pesos (P10,000.00) to be deducted from his terminal leave pay.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quiason, JJ., concur.
Griño-Aquino, J., on official leave.

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