

VICTORIA PRIETO, AND PACIFICO SALAPARE, COMPLAINANTS, VS. CRISPIN PERALTA, DEPUTY PROVINCIAL SHERIFF OF CAMARINES SUR, RESPONDENT.

A.M. No. P-1161. July 31, 1978

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This complaint filed by spouses Victoria Prieto and Pacifico Salapare against Crispin Peralta, Deputy Provincial Sheriff of Camarines Sur, resulted from the enforcement of a writ of possession issued by Branch I of the Court of First Instance of Camarines Sur, stationed in Naga City, on January 9, 1976, in Civil Case No. 6444, entitled, "Dr. Domingo Abella and Milagros Romualdez Abella, plaintiffs, versus Pacifico Salapare and Victoria B. Prieto, defendants", for foreclosure of mortgage which was decided in favor of the Abellas.

The complaint filed with this Court alleged:

"The undersigned accuse CRISPIN PERALTA, Deputy Provincial Sheriff of Camarines Sur, for IGNORANCE OF LAW, OPPRESSION, EXTORTION, ABUSE OF AUTHORITY and IRREGULARITY IN THE PERFORMANCE OF HIS DUTIES, committed as follows:

"That on or about January 10, 1976, the respondent for valuable consideration, coupled with oppression, extortion, abuse of authority and IRREGULARITY IN THE PERFORMANCE OF HIS DUTIES caused to be issued a writ of possession over the Properties of the complainants without a motion requesting the Court for its issuance, or if there was, no such motion was furnished or received by them and without an order of the Court authorizing its issuance, or if there was, no such order was furnished or received by them before the service and execution of the writ, thus depriving them of an opportunity to resist the same and once the writ was issued, the respondent Crispin Peralta, Deputy Provincial Sheriff immediately rushed to serve and execute the same without first securing a travel order to serve the same (see Annex "A") and without requiring the payment of Sheriff's fees for such service (see Annex "B") and selected one Saturday afternoon for this purpose to insure impunity because it prevented the complainants from complaining to the Court as there were no offices on said afternoon and the following day, accompanied by two constabulary authorities without the prevailing parties or their duly authorized representative accompanying him and once in the premises, did, then, and there willfully, feloniously and unlawfully approached the complainants and asked them to pay him P3,000.00 if they desire that he will not yet serve the writ of possession but the complainants counter offered P2,000.00 which the Sheriff refused to accept because according to him they are many to divide the same; after this, the Sheriff went to the stage where the members of the Combo of the complainants' night club were rehearsing, stopped them and pushed them out of the compound including their instruments; then the Sheriff without permission went up the dormitory of the hostesses who were then having their afternoon nap with scanty clothes, woke them up and pushed them out of their dormitory, throwing at the same time their personal belongings outside; and once the night club was vacated, the Sheriff demolished the improvements therein,

without special order from the Court to do so, contrary to the provisions of Sec. 14, Rule 39, Rev. Rules of Court, to the great damage and prejudice of the complainants.

"CONTRARY TO LAW."

(pp.1-2, rollo)

Required to answer the foregoing complaint, respondent Peralta denied the charges. (pp. 7-9, *ibid.*)

As the complaint required presentation of evidence, We referred the same to Hon. Rafael dela Cruz, who on March 5, 1976, was the Executive Judge of the Court of First Instance of Camarines Sur, for investigation, report, and recommendation. Judge dela Cruz conducted a hearing and received the evidence, testimonial and documentary, of complainants and of respondent. Complainant presented seven (7) witnesses while respondent testified in his behalf and called three (3) witnesses to support his denials.

From the voluminous transcript of the testimonies of the witnesses and the documents submitted, the Investigating Judge summarized his findings to this effect:

"The principal complainant Pacifico Salapare, a defendant, lost in a civil case in the Court of First Instance of Camarines Sur. It is essential to know approximately the personality of the man. He is quite dignified in looks and in manner, with an appearance which may, if not deceptive, exude respectability.

"Before Martial Law, he used to own a gun store. He is a firearms dealer and an insurance agent. His wife is Victoria Prieto-Salapare, who together with him, owns and manages what is known in the City of Naga as the Quarry Beer House. On account of some financial reverses for the past few years, he had several cases in the city and municipal courts of Naga and in Camarines Sur, some of which were settled amicably and the others were either on appeal or pending court proceedings.

"Having lost the case, the court issued a writ of possession. The writ fell upon the shoulders of respondent Crispin Peralta for service and enforcement.

"It is the manner of Peralta's enforcement of the writ which led the Salapares to complain against him. He was charged for ignorance of the law, oppression, extortion, abuse of authority and irregularity in the performance of duty.

"The investigator cannot discount the fact that the complaining party lost in a case which they consider of vital importance. We cannot, therefore, ignore wounded feelings and resenting attitude towards the enforcement of any prevailing judgment's beneficial effects. This must be the situation which respondent Peralta needs to face.

"The complaint charges ignorance of the law and irregularity in the performance of duty because the complainants did not receive copy of the order granting the writ of possession. There was an order. If they did not receive a copy of the order it was not the duty of the sheriff to furnish them one. Even assuming that it was the sheriff's duty which was not, the copy of the order must have been sent to complainant's attorney of record and the latter did not find opportunity to furnish or show to the complainants.

"The respondent sheriff did not arm himself with the requisite travel or mission order before serving the writ. There is no law requiring travel or mission order to effect validity of the process. It was explained by Peralta that the place of the Salapares which was the subject of the writ of possession is very near the court. This cannot be denied.

"If traveler mission orders are required of sheriffs before service of process, the requirement was purely designed in fixing the sheriff's traveling expenses and for the office of the Clerk of Court or the office of the Executive Judge to know where a sheriff is at a given time and date.

"The complainants believe that the respondent sheriff is ignorant of the law for having served the writ of possession without the required sheriff's fees. It seems that the complainants have no reason to resent this fact if it is true that the sheriff's fees were not paid. It is more the concern of the government collection office which should feel aggrieved with such negligence if it were negligence at all of Peralta for having wittingly or unwittingly neglected to exact the fees for the sheriff. Let us see what Peralta said on the point.

"It is the view of Peralta that the sheriff's fees need not be collected in advance as it is the office practice because the fees constitute a lien on the property chargeable upon the losing party.

"The Salapares tried to show that respondent Peralta tried to exact from them the amount of P3,000.00 so that he can stay or hold the enforcement of the writ of possession in abeyance, or to be exact, to enforce the writ on the first working day of the ensuing week, thus giving them the opportunity to stay at the place to include the weekend. Salapare in essence conveyed the idea that he does not have the amount being asked but he offered to give P2,000.00 instead which Peralta refused to accept saying that there were several persons who need to divide the amount and P2,000.00 is certainly not adequate.

"The specified detail on this charge involved credibility of witnesses. To prove the specification, the complainants presented the Insurance Clerk of Pacifico Salapare, Nicetas Reyes who averred that she overheard the conversation of Peralta and Salapare, the former demanding P3,000.00 from the latter and the latter making a counter offer of P2,000.00.

"The Salapares tried also to show through Nicetas Reyes that the sheriff was cruel for having allowed Salapares children to get out of the house even if it was raining. This particular allegation was denied by the respondent. He claims that the Salapares did not go out in the rain. They even slept at their residence because their belongings were still there. They were waiting for vehicles to haul them.

"To show that the respondent was abusive and irregular in effecting the writ, witnesses for the complainant through Domingo Butacan that respondent summoned him to buy intoxicating liquor. He claims that he was suffering from severe abdominal pain. In spite of his sick condition, he was grabbed and threatened by Peralta if he did not move and move fast. He said that Peralta ordered twice for two bottles of gin.

"We should receive Butacan's testimony with caution. He is a long time protegee of the Salapares. He is too favored which necessitates gratitude on his part. His testimony could not be given the full credit he wantingly deserves.

"He claims that Peralta with his two uniformed companions drank the gin. In the afternoon that Peralta was allegedly intoxicated, Capt. Panganiban inspected the place. If Peralta was, at the time, heavily intoxicated, or either of the police personnel, he could have complained to Capt. Panganiban for this alleged boisterous act of Peralta.

"One interesting aspect of the complainants' charges came from Soledad Gonzales. She declared that Peralta on the afternoon of the 9th of January, 1976, ordered a case of beer which he and his two other companions drank. At first, Peralta hesitated to pay but the following day, January 10 she was constrained to ask for the payment. Peralta, according to her, arrogantly told her she was mistrusting him for a measly amount. Nevertheless, Peralta paid. She issued a receipt. She presented an issue receipt pad (Exhibit A) duly registered with the District Office of the Bureau of Internal Revenue (Exhibit A-1). The receipt which was allegedly issued to Peralta was dated January 10, 1976 (Exhibit A-3), the duplicate of which was presented as Exhibit A-2, the item purchased was beer (Exhibit A-4).

"The receipt book was carefully scrutinized. The receipt of purchase (Exhibit A-2) was the last receipt issued. The witness averred that there were two tenders at the bar who issued receipts for purchases of customers at the Quarry Beer House. One was a certain Miss Abejo who was not presented at the time of investigation altho ordered to present the other receipt book allegedly in the possession of that Miss Abejo but surrendered to the management every end of office hours.

"We cannot fully rely upon the truth of Exhibit A-2 as the receipt which purports to show the purchase of beer by Peralta. In the first place, Peralta was not named therein. In the second place, we could hardly find any explanation why the date January 10 where the figure "10" appears to have been the subject of erasure.

"The Investigator feels more inclined to believe what Capt. Panganiban testified. He said he did not notice Peralta nor his men to be drunk in the afternoon of the 9th of January when he inspected Salapares' premises. Certainly, if there was any irregularity or any abuse committed by Peralta or the police authorities, and understanding well the nature of Mr. and Mrs. Salapare at the time the writ was executed, they could have immediately lodged their complaint to Capt. Panganiban who was in charge of the Naga City Station, the PC-Integrated Police Force.

"It is indeed true that the complainant Pacifico Salapare made denunciations before the police authorities of

Naga for the alleged extortion perpetrated by Peralta. It was recorded at the police blotter (Exhibit D) stating that Salapare made the denunciation at about 9:00 o'clock A.M. of January 14 (Exhibit D-1).

"Does this piece of exhibit prove Peralta actually committed extortion? From the very mouth of Salapare himself, as early as January 9, when he and Peralta almost came to shouting confrontation, he told Peralta to get prepared as the matter will reach the court, meaning that he will seek redress of his supposed grievance from the courts of justice. But why did it take him four days before he came to the police headquarters? Why did he not denounce Peralta before Pat. Baricante? Sergeant Cuesta or Capt. Panganiban? Does he mean to imply that those police officers can no longer enjoy his trust since even Capt. Panganiban profess friendship with the Salapares? The police officers were there at the place, why did Salapare not inform them of Peralta's misdeeds? These are questions which were not satisfactorily explained even at the investigation by the complainant.

"Such was the state of the complained acts made by Mr. & Mrs. Pacifico Salapare against Deputy Sheriff Peralta. On the other hand, respondent Peralta impressed us that after Pacifico Salapare lost the case of foreclosure in Civil Case No. 6444 before Branch I of this Court, there was a confirmation sale ordered by the court dated December 24, 1975 (Exhibits 1 and 1-a). A writ of possession was also issued (Exhibit 5).

"For the service rendered to enforce the writ of possession, a collection fee, delivery fee and kilometrage fee were required by respondent (Exhibits 7 and 8) which were both dated October 22, 1975.

"As soon as the writ of possession was to be enforced, respondent Peralta requested the assistance of the Integrated-PC police force. He went to the Provincial Commander's Office. The reason for the assistance sought lies on the fact that presently sheriffs are not allowed to carry firearms. Besides, Peralta knew that Salapare was formerly a gun store owner. He knows guns as he was formerly a dealer of guns. So as soon as the prevailing party in the civil case, Mrs. Milagros Romualdes-Abella, was notified of the enforcement of the writ, she requested the Provincial Commander for assistance. Peralta followed up the request. The Provincial Commander approved the request and issued a routing slip (Exhibit 3). Police Corporal Jacinto Cuesta and Police First Class Rolando Baricante were sent to assist Peralta (Exhibit 4).

"There is no irregular act committed by respondent sheriff in seeking constabulary assistance. Neither did he particularly select a Saturday to enforce the writ just to unreasonably annoy the complaining Salapares.

"The investigator is more inclined to believe that the complainants have been overly conscious of their supposed grievances.

"OBSERVATIONS

"1. The respondent Sheriff is new in the job. He appears very strict and exceedingly mindful of the powers entrusted to him;

"2. He enforces writs and processes in more or less military manner;

"3. Complainants are conscious that they can be protected by good and reputable lawyers.

"FINDINGS

"1. The ignorance of law attributed to respondent is not ignorance of law but it may merely constitute error of interpretation in the collection of fees. Neither the government nor private persons is prejudiced by his acts;

"2. There was no abuse of authority committed either by Peralta or the soldier who accompanied him;

"3. No violation committed by respondent Peralta of Sec. 14, Rule 39 of the Rules." (pp. 28-37 of report)

Judge dela Cruz recommends exoneration of respondent.

Considering that the Investigating Judge had the opportunity to hear the witnesses in person and observe their demeanor while testifying on the facts related by them, the question as to which version is to be given credence is best left to him, and We accordingly adopt his findings and recommendation.

PREMISES CONSIDERED, We dismiss the charges against respondent Peralta reminding him, however, that there is no incompatibility between the exercise of zeal in the performance of one's official duties and the observance of courtesy to and due consideration for the feelings and sensibilities of parties who find themselves at the bitter end of a litigation. One who holds the office of a sheriff can wield his authority with a kind and understanding hand without failing in his duties.

SO ORDERED.

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

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