

LEONORA BITOON, FLORENCIO CANTADA, ANITA MENDOZA, CAEL GLORIOSO AND ATTY. MIRIAM S. CLORINA-RENTOTY, COMPLAINANTS, VS. JUDGE LORINDA B. TOLEDO-MUPAS, MTC-DASMARIÑAS, CAVITE, RESP...

A.M. NO. MTJ-05-1598. January 23, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is the motion for reconsideration of respondent Judge Lorinda B. Toledo-Mupas who seeks to set aside our Resolution dated August 9, 2005, finding her administratively liable, for gross ignorance of the law and for incompetence. In our Resolution, respondent was suspended for three months without salary and benefits, and also fined in the maximum amount of P40,000, with warning that a repetition of the same or similar acts subject of the complaint will be dealt with more severely.

Movant/Respondent now argues that the Court erred in ruling that she exceeded her authority in the conduct of preliminary investigations and failed to observe the elementary procedural rules on bail. She stresses that under the then provisions of Section 17, Rule 114 of the Rules of Court, [1] she was clothed with authority to act on the Urgent Petition for Bail filed by accused Eva Malihan in Criminal Cases Nos. 01-1485 to 87 since said cases were then pending in her sala for preliminary investigation. [2] She also cites *Borinaga v. Tamin* [3] where this Court held that when bail is discretionary, the application for it may only be filed in the court where the case is pending, whether on preliminary investigation, trial or appeal. [4]

She reiterates that it was absolutely wrong for complainants to claim that they were not heard before bail was granted. She restates the chronology of the events in the subject criminal cases, stressing that during the hearing on the Urgent Petition for Bail, she ordered complainants to file their comment and a comment was duly filed. She adds that she even granted them an extension of five days within which to file their comment, over the objections of the defense counsel.[5] Likewise, the petition for bail was only resolved after both the complainants and the accused were duly heard, and upon the motion for complainants themselves.

She alleges that "the Resolution dated 14 September 2001 [granting bail]...clearly recited the facts that were evaluated based on the evidence presented by both parties and the law upon which the Resolution was based." [6] Respondent again emphasizes that she granted bail not because the evidence of guilt is not strong, but because based on the allegations of the parties, it appeared to her that accused Eva Malihan was entitled to bail as a matter of right. [7]

In addition, respondent charges complainant Atty. Miriam S. Clorina-Rentoy of professional misconduct: first, for having resorted to the instant administrative complaint as a deliberate and malicious attempt to circumvent the specific modes of appeal provided by law [8] and, second, for furnishing Judge Dolores L. Español, Regional Trial Court, Branch 90, Dasmariñas, Cavite, with a copy of the Motion to Transfer Accused Eva Malihan to the Provincial Jail or to the Bureau of Jail Management and Penology knowing fully well that the criminal case was

pending in respondent's sala. [9] These acts, respondent charges, amount to habitual forum-shopping which should render Atty. Clorina-Rentoy administratively liable. She asks that complainant Atty. Clorina-Rentoy be investigated.

Respondent likewise claims that complainants were merely using and abusing the courts of justice and its processes for their own selfish intentions since after they got what they wanted, they sought from the Regional Trial Court of Cavite the dismissal of the criminal cases against accused Malihan.

Lastly, respondent begs the compassionate understanding and magnanimity of the Honorable Court for some leniency regarding her unintentional transgression. [10] She points out that the Municipal Trial Court of Dasmariñas, Cavite, now has approximately 3,000 cases, with an average of 20 cases being received daily and an average disposition of 160 criminal cases and 100 civil cases per month.

On October 18, 2005, we required the complainants to comment on the motion for reconsideration. However, despite the lapse of the given period, no comment had been filed. Complainants, however, belatedly filed the comment on December 22, 2005, which we noted without action on January 17, 2006.

We have carefully studied respondent's motion for reconsideration and found, except as to the matter of penalties, no new and substantial argument to warrant a reconsideration of our resolution. Nonetheless, we take this opportunity to give clarification to any question that may still linger in respondent's mind regarding her liability.

Respondent correctly asserts that she was clothed with authority to hear accused Eva Malihan's application for bail. Before its amendment, Section 17(b), Rule 114 of the Rules of Court expressly provided that where bail is discretionary, the application therefore must be filed in the court where the case is pending. Said section provides,

Section 17. Bail, where filed. (a) Bail in the amount fixed may be filed with the Court where the case is pending,....

(b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial or appeal.

However, respondent's liability arises not from entertaining the application for bail, but in failing to observe basic, clear, and well-settled rules on her authority in the conduct of preliminary investigations and on bail.

Respondent being a judge is expected to be conversant with elementary rules of procedure and settled doctrines. She owes the public and the court the ability to be proficient in law and the duty to maintain professional competence at all times. She is expected to exhibit more than just a cursory acquaintance with statutes and procedural rules. Thus, she should have known the well-settled rule that a municipal judge conducting a preliminary investigation has no legal authority to determine the character of the crime. The only authority of a municipal judge conducting a preliminary investigation and for admission of the accused to bail is to determine whether there is probable cause against the accused and if so, whether the evidence of guilt is strong, but he or she has no authority to reduce or change the crime charged in order to justify the grant of bail to the accused. [11] In granting bail on the ground that the charge should be only for simple estafa and not for the capital offense of syndicated estafa, respondent exceeded her authority and violated this basic rule.

Respondent also disregarded an elementary rule of procedure in bail. It was mandatory for respondent to conduct a formal hearing and to require the presentation and submission of evidence in the petition for bail. When the grant of bail is discretionary, the prosecution has the burden of showing that the evidence of guilt against the accused is strong. [12] The determination of whether the evidence of guilt is strong, being a matter of judicial discretion, remains with the judge. This discretion by the very nature of things, may rightly be exercised only after

the evidence is submitted to the court at the hearing. Since the discretion is directed to the weight of evidence and since evidence cannot properly be weighed if not duly exhibited or produced before the court, it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner for bail having the right to cross examination and to introduce his own evidence in rebuttal. [13]

In the application for bail of a person charged with a capital offense punishable by death, reclusion perpetua or life imprisonment, a hearing, whether summary or otherwise in the discretion of the court, must actually be conducted to determine whether or not the evidence of guilt against the accused is strong. A summary hearing means such brief and speedy method of receiving and considering evidence of guilt as is practicable and consistent with the purpose of hearing which is merely to determine the weight of evidence for the purposes of bail. [14]

Since the determination of whether or not the evidence of guilt against the accused is strong is a matter of judicial discretion, the judge is mandated to conduct a hearing even in cases where the prosecution chooses to just file a comment or leave the application for bail to the discretion of the court. [15] The judicial discretion lies not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the prosecution's evidence of guilt against the accused. A hearing is plainly indispensable before a judge can aptly be said to be in a position to determine whether the evidence for the prosecution is weak or strong. The mere filing of a comment from complainants and a reply thereto by accused Malihan, as was done per requirement by respondent, is insufficient compliance with this basic rule of procedure. [16] Respondent's violation becomes more pernicious considering that she ignored the request of complainants in their motion to resolve the preliminary investigation that they be allowed to present evidence in opposition to the application for bail. [17]

Respondent claims in the instant motion for reconsideration that a hearing was conducted. She stresses that her resolution clearly recites the findings of fact based on the evidence presented by both parties. However, our careful scrutiny of the records of this case shows no proof that the required hearing was conducted. We note that respondent has even asserted in her comment that no hearing was required. [18]

The importance of the rule requiring the conduct of a hearing in an application for bail cannot be overemphasized. On its results would depend the right of an accused to provisional liberty as opposed to the duty of the State to protect its people against dangerous elements. The resolution of the issue affects important norms in our society: liberty on one hand, and order on the other. [19] To minimize, if not eliminate, error and arbitrariness in a judge's decision, Section 8, Rule 114 of the Rules of Court [20] requires the judge to hear the parties, then make an intelligent assessment of their evidence.

As regards her complaint against complainant Atty. Clorina-Rentoy for professional misconduct, we find it appropriate to dismiss the same for lack of merit. While it is true that the first paragraph of the complaint states the observation that the remedies of certiorari and appeal take time and that the administrative complaint is being pursued before other available remedies, such statement does not show, except by conjecture, that Atty. Clorina-Rentoy has filed the instant administrative complaint in malicious disregard of proper court procedures. Nor does it show, as respondent contends, that Atty. Clorina-Rentoy holds the justice system in contempt. Notably, nowhere in the complaint was it requested that the respondent's order granting bail be nullified. Hence, administrative sanctions were not at all being resorted to in lieu of the proper procedure as respondent alleges.

In the same manner, respondent has failed to show any prima facie evidence that Atty. Clorina-Rentoy deserves to be investigated for furnishing Judge Español with a copy of the motion to transfer accused Eva Malihan to the provincial jail. A perusal of the motion itself shows that the motion was addressed to respondent's court and that no relief whatsoever was sought from the RTC of Dasmariñas, Cavite. In fact, Atty. Clorina-Rentoy's name does

not even appear on said pleading. [21] Thus, Atty. Clorina-Rentoy cannot be held liable for deliberate forum-shopping or abuse of court processes.

We do not find it here necessary to make a disquisition on respondent's assertion that the other complainants have abused the courts. Suffice it to say that courts are created to serve the people, to provide effective avenues where they may go for the redress of their grievances or the protection or enforcement of their rights. That complainants have later withdrawn from the Regional Trial Court of Cavite the criminal cases they have filed against accused Eva Malihan is not per se contemptible nor does it show that they have maliciously abused court processes.

Now on the matter of penalties. In light of respondent's sincere plea for compassion from the Court, we take a second look on the penalty imposed.

While respondent was previously fined in the amount of P21,000 in *Español v. Judge Mupas*, [22] and recently suspended for three months in our Resolution of June 8, 2005, in *Loss of Court Exhibits at MTC-Dasmariñas, Cavite*, [23] we note that the instant case involves acts committed much earlier than the acts involved in those two cases. Hence, although her violation remains inexcusable, respondent is not an incorrigible third-time offender who deserves a penalty that is stiffer than that last imposed. We likewise consider that respondent did not act with malice, bad faith or corrupt motives and that there is here an absence of any serious damage to the complainants. Thus, the penalty of three months suspension without salaries and benefits with the additional penalty of fine in the maximum amount of P40,000 appears too severe. We therefore modify the same and remove the monetary component of P40,000 fine, but give respondent a stern warning that the commission of the same, or similar acts will be dealt with more severely, even by dismissal if warranted.

WHEREFORE, the motion for reconsideration dated September 2, 2005, filed by respondent Judge Lorinda B. Toledo-Mupas is **PARTIALLY GRANTED**. The Court's Resolution of August 9, 2005, is **MODIFIED**. The penalty of fine in the amount of FORTY THOUSAND (P40,000) PESOS imposed on her (in addition to the three months suspension without salaries and benefits) is **DELETED**. She is, however, sternly warned that a repetition of the same or similar acts will be dealt with more severely. After she has served the period of suspension, she should **RETURN** to her post promptly.

SO ORDERED.

Panganiban, C.J., Puno, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Section 17. Bail, where filed.— (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality.....

(b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial or appeal.

...

A.M. No. 05-8-26-SC, which took effect recently on October 3, 2005, amended Rules 112 and 114 of the Rules of Court and removed the conduct of preliminary investigation from judges of first level courts. Section 17 (b) has now been amended to read as follows:

Section 17. Bail, where filed. (a)....

(b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may be filed only in the court where the case is pending, on trial or appeal.

[2] Respondent's Motion for Reconsideration, p. 3.

[3] A.M. No. RTJ-93-936, 10 September 1993, 226 SCRA 206.

[4] Respondent's Motion for Reconsideration, pp. 3-4.

[5] *Id.* at 4.

[6] *Ibid.*

[7] *Id.* at 9.

[8] *Id.* at 10.

[9] *Id.* at 10-11.

[10] *Id.* at 12-13.

[11] *Depamaylo v. Brotarlo*, A.M. No. MTJ-92-731, 29 November 1996, 265 SCRA 151, 157.

[12] *Jamora v. Bersales*, A. M. No. MTJ-04-1529, 16 December 2004, 447 SCRA 20, 30.

[13] *Basco v. Rapatalo*, A.M. No. RTJ-96-1335, 5 March 1997, 269 SCRA 220, 225.

[14] *Id.* at 226.

[15] *Concerned Citizens v. Elma*, A.M. No. RTJ-94-1183, 6 February 1995, 241 SCRA 84.

[16] See *Gimeno v. Arcueno, Sr.*, A.M. No. MTJ-94-981, 29 November 1995, 250 SCRA 376 and *Concerned Citizens v. Elma*, *supra*.

[17] *Rollo*, p. 175.

[18] *Id.* at 187.

[19] *Concerned Citizens v. Elma*, A.M. No. RTJ-94-1183, 6 February 1995, 241 SCRA 84, 89-90.

[20] Section 8. Burden of proof in bail application.— At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, reclusion perpetua, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.

[21] *Rollo*, p. 66.

[22] A.M. Nos. MTJ-01-1348, MTJ-01-1352, 01-2-100-RTC and MTJ-01-1358, 11 November 2004, 442 SCRA 13.

[23] A.M. No. MTJ-03-1491 (Formerly A.M. No. 02-9-228-MTC), 8 June 2005, 459 SCRA 313.

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