

## THIRD DIVISION

[ **A.M. NO. MTJ-04-1547 (FORMERLY OCA IPI NO. 02-1256-MTJ), April 15, 2005** ]

**JOSEFINA C. RIBAYA, COMPLAINANT, VS. JUDGE AURORA BINAMIRA-PARCIA, MUNICIPAL TRIAL COURT IN CITIES, LIGAO CITY, RESPONDENT.**

### R E S O L U T I O N

**CORONA, J.:**

Before us is a verified complaint<sup>[1]</sup> filed by Josefina C. Ribaya praying that disciplinary action be taken against Judge Aurora Binamira-Parcia of the Municipal Trial Court in Cities (MTCC), Ligao City, Albay relative to Criminal Case No. 8617 (*People of the Philippines v. Sps. Vicente and Corazon Ribaya*).

The complaint alleged that Assistant Provincial Prosecutor Pedro Vega, in his personal capacity, filed before the MTCC, Ligao City a criminal complaint for *estafa* against the Spouses Ribaya on November 29, 2001. The spouses, after receiving P12,000 from Vega, allegedly misappropriated the amount to the latter's prejudice. The preliminary investigation was then conducted by respondent judge.

Complainant, the daughter of the accused spouses, observed several irregularities in the conduct of the preliminary investigation and the issuance of the warrant of arrest: (1) no affidavit of any named witness was attached to the complaint; (2) one of the witnesses, a certain "Antal Rebanco," was a fictitious person; (3) respondent issued a warrant of arrest<sup>[2]</sup> on the same day the complaint<sup>[3]</sup> was filed without a searching examination of any of the witnesses and (4) a bail bond of P10,000<sup>[4]</sup> for each accused was also fixed on the same day.

Thereafter, the spouses filed the following pleadings: (a) "Opposition to the Issuance of Warrant of Arrest and Motion for Leave to file Motion for Reconsideration of the Prosecutor's Resolution";<sup>[5]</sup> (b) "Motion to Recall Warrant of Arrest and its Implementation be Held in Abeyance";<sup>[6]</sup> (c) "Supplemental to the Motion to Recall Warrant of Arrest";<sup>[7]</sup> and (d) Motion for Reconsideration.<sup>[8]</sup>

In an order dated January 17, 2002, respondent judge denied all of the foregoing motions and opposition.

The spouses then filed a motion to quash and sought the nullification of "subsequent orders"<sup>[9]</sup> on February 14, 2002. They alleged that the MTCC had no jurisdiction and authority to conduct a preliminary investigation of a complaint filed by an offended party directly with the court. The authority to conduct a preliminary investigation was vested solely on the Office of the City Prosecutor.

While waiting for the resolution of their motion to quash, the spouses did not post bail. They believed that there was no need for them to do so since any warrant issued for their arrest would be void, having been irregularly issued.

On April 10, 2002, however, Corazon Ribaya was apprehended by two arresting officers in the public market of Ligao City by virtue of a warrant of arrest issued by respondent judge.

Because of the "irreparable damage, mental anguish and social humiliation" suffered by her mother Corazon, the complainant filed this administrative case against Judge Parcia on May 16, 2002.

In her answer<sup>[10]</sup> dated August 5, 2002, respondent judge claimed that complainant, a law student who prepared all the motions filed by her parents, was not a party in Criminal Case No. 8617. The motions basically questioned respondent's authority to conduct a preliminary investigation.

Respondent explained that she conducted the preliminary investigation of the criminal complaint against the spouses because the Officer-in-Charge (OIC) of the Office of the City Prosecutor was too busy to do so.

To support her claim, respondent attached the affidavit<sup>[11]</sup> of Angeles S. Vasquez, OIC of the City Prosecutor's Office of the then newly-created Ligao City. Vasquez stated that the City Prosecutor's Office was still undergoing reorganization when the subject criminal complaint was filed. It had neither enough manpower nor office space in the Hall of Justice. The positions of City Prosecutor, Assistant Prosecutors, stenographers and staff had not yet been filled. His workload as Assistant Provincial Prosecutor and OIC City Prosecutor was so heavy that time constraints did not permit him to conduct preliminary investigations. Thus, it was the respondent judge who conducted the preliminary investigation.

Regarding the motion to quash and nullification of subsequent orders,<sup>[12]</sup> respondent judge merely stated that the proper remedy of the spouses was to file a petition for annulment of the proceedings before the Regional Trial Court (RTC).

In a rejoinder<sup>[13]</sup> dated August 7, 2002, complainant noted that the affidavit of OIC City Prosecutor Angeles S. Vasquez ironically supported, if not proved, her claim that the respondent had in fact been conducting preliminary investigations. She also reiterated that the constitutional rights of her parents were violated when respondent: (a) issued a warrant of arrest without a preliminary examination of the complainant's witnesses and (b) issued the warrant of arrest on the same day the complaint was filed.

In a report<sup>[14]</sup> dated July 8, 2003, the Office of the Court Administrator (OCA) found that respondent erred when she conducted the preliminary investigation of the subject criminal complaint even after the Municipality of Ligao, Albay had been converted into a city. The OCA recommended that: (1) the complaint be re-docketed as a regular administrative matter; and (2) the respondent be reprimanded, directed to concentrate her time and effort on performing her judicial tasks and warned that a repetition of the same or similar offense would be dealt with more severely.

A motion for reconsideration<sup>[15]</sup> was filed by respondent on October 1, 2003. This time, however, respondent claimed that what she conducted on November 29, 2001 was a *preliminary examination* to determine probable cause for the issuance of a warrant of arrest against the spouses. Respondent also claimed that the criminal complaint was governed by Sec. 9, Rule 112 of the Revised Rules of Criminal Procedure, the rule governing cases that did not require preliminary investigation.

Since the amount involved in the estafa case was P12,000, no preliminary investigation was required. She explained that under Art. 315 of the Revised Penal Code (RPC), the penalty for estafa where the amount defrauded is over P6,000 but not exceeding P12,000 is *prision correccional* in its minimum and medium periods, that is, imprisonment ranging from *6 months and 1 day to 4 years and 2 months*. Considering that Sec. 2, Rule 112, the section relied upon by complainant, required a preliminary investigation for offenses where the penalty prescribed by law is *at least 4 years, 2 months and 1 day*, the criminal case against the spouses was not among those needing preliminary investigation. In any event, respondent insisted that under Sec. 6(b), Rule 112, a preliminary investigation could be conducted either by the judge or the prosecutor.

An opposition<sup>[16]</sup> to the motion for reconsideration was submitted by complainant on October 25, 2003.

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial.<sup>[17]</sup>

Among the officers authorized by Sec. 2, Rule 112<sup>[18]</sup> of the Revised Rules on Criminal Procedure to conduct preliminary investigation are the city prosecutors and judges of the MTC and MCTC. Although judges of inferior courts are authorized to conduct preliminary investigation of all crimes within their jurisdiction, the task is essentially an executive function. As far back as *Collector of Customs v. Villaluz*,<sup>[19]</sup> we already held that:

[w]hile we sustain the power of the x x x courts to conduct preliminary examination, pursuant to Our Constitutional power of administrative supervision over all courts, as a matter of policy, we enjoin x x x judge[s] x x x to concentrate on hearing and deciding before their courts. x x x [Judges] should not encumber themselves with the preliminary examination and investigation of criminal complaints, which they should refer to the municipal judge or provincial or city fiscal, who in turn can utilize the assistance of the state prosecutor to conduct such preliminary examination and investigation.

The old rules provided that:

"Judges of Metropolitan Trial Courts, except those in the National Capital Region, of Municipal Trial Courts, and Municipal Trial Courts shall have authority to conduct preliminary investigations of crimes alleged to have been committed within their respective territorial jurisdictions which are cognizable by Regional Trial Courts."<sup>[20]</sup>

City judges then were clearly authorized to conduct preliminary investigation and examination. But even then, we also held that the provisions of Rule 112 granting city judges the authority to conduct preliminary investigation *did not apply to judges of cities the charters of which authorized the city fiscal only to conduct preliminary investigation of criminal complaints.*<sup>[21]</sup>

This ruling was, in fact, integrated into the Revised Rules of Criminal Procedure. Under Sec. 1, Rule 110, criminal actions in *chartered cities* are instituted by filing the complaint *only with the City Prosecutor*. The rule implies that the task of conducting preliminary investigation in these cities is now lodged with the Office of the City Prosecutor. Consequently, inferior court judges of cities whose charters authorize only the fiscal to conduct preliminary investigation are no longer allowed to perform this function.

The Municipality of Ligao was converted into a city by RA 9008 which took effect on February 21, 2001. This law, also known as the charter of the City of Ligao, provides in Sec. 50 that:

- (a) There shall be established in the city a prosecution service to be headed by a city prosecutor and such number of assistant prosecutors as may be necessary, who shall be organizationally part of the Department of Justice (DOJ), and under the supervision and control of the Secretary of Justice and whose qualifications, manner of appointment, rank, salary and benefits shall be governed by existing laws covering prosecution in the DOJ;
- (b) The **City Prosecutor shall handle the criminal prosecution in the MTC in the city as well as in the RTC for criminal cases originating in the territory of the city**, and shall render to or for the city such services as are required by law, ordinance or regulation of the DOJ;
- (c) The Secretary of Justice shall always assure the adequacy and quality of the prosecution service in the city and for this purpose, shall in the absence or lack or insufficiency in number of city assistant prosecutors as provided hereinabove, designate from among the assistant provincial prosecutors, a sufficient number to perform and discharge the functions of the city prosecution service as provided hereinabove. (*Emphasis ours*)

Clearly, respondent judge had no more authority to conduct a preliminary investigation of the subject criminal complaint. The officer authorized to conduct preliminary investigations in the then newly-created City of Ligao was its City Prosecutor. At that time, the duty devolved upon OIC City Prosecutor Angeles S. Vasquez, despite the administrative difficulties he was encountering. As a matter of fact, OIC Vasquez knew fully well that the task was his when he stated in his affidavit:

"x x x as OIC of the City Prosecution Office, the undersigned prosecutes all heinous cases emanating from the City of Ligao *as well as those crimes or offenses cognizable by the MTCC*. This workload is aside from xxx regular assignment as an Assistant Provincial Prosecutor."<sup>[22]</sup>  
(*Emphasis supplied*)