

## THIRD DIVISION

**[ A.M. No. MTJ-01-1344 (Formerly A.M OCA No. 97-461-MTJ), September 05, 2001 ]**

**SPS. LYDIO AND LOURDES ARCILLA, COMPLAINANTS, VS. JUDGE LUCIO PALAYPAYON AND BRANCH CLERK OF COURT REMEDIOS BAJO, MTC, TINAMBAC, CAMARINES SUR, RESPONDENTS.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

The present administrative case stemmed from the complaint of spouses Lydio and Lourdes Arcilla, filed with this Court on December 4, 1997, charging Judge Lucio Palaypayon (Ret.) of the Municipal Trial Court, Tinambac, Camarines Sur with gross ignorance of the law; and Remedios B. Bajo, clerk of court of the same court, with irregularity in the performance of duty relative to Criminal Case No. T-97-6287 for estafa.

In their complaint, spouses Lydio and Lourdes Arcilla averred *inter alia* that on September 16, 1997, SPO1 Teresito Porteza filed with the MTC presided by respondent judge a complaint for estafa against Lydio Arcilla. Porteza alleged that the accused failed to pay P22,000.00 as rentals corresponding to the period of five (5) months for the lease of the operational power chainsaw owned by the former. That same day, without conducting the required preliminary investigation, respondent judge issued a warrant of arrest against the accused. He was then arrested and detained at the Tinambac Police Station for his inability to post bail. According to complainant Lourdes Arcilla, respondent judge told her that if she would pay one-half of Porteza's claim, her husband would be temporarily released.

While her husband was incarcerated, Lourdes went to the MTC to procure certified true copies of the complaint and the warrant of arrest. However, respondent clerk of court denied her request, giving her instead mere photocopies of the desired documents.

Complainants also claimed that respondent judge was previously found guilty of various administrative charges in three (3) other administrative cases, thus:

- (1) A.M. No. MTJ-93-823, "Ortiz vs. Palaypayon." Respondent was fined P10,000.00 for "gross ignorance of the law (234 SCRA 391);
- (2) A.M. No. MTJ-92-421, "Cosca vs. Palaypayon." Respondent judge was fined P20,000.00 for illegal solemnization of marriage, bribery, utilizing a detention prisoner to work in his house and failure to supervise his clerk of court in the preparation of monthly report of cases submitted to this court (237 SCRA 249);

- (3) A.M. No. MTJ-95-1021, "Peralta vs. Palaypayon." Respondent judge was reprimanded for sentencing a complainant to an excessive penalty of five (5) days imprisonment for direct contempt of court; and
- (4) A. M. No. MT J-93-751, "Peralta vs. Palaypayon." Respondent judge was fined P 2,000.00 and warned for grave abuse of authority.

In their joint comment, respondent judge vehemently denied all the allegations against him for being false and misleading. Contrary to complainants' claim, he conducted a preliminary investigation before issuing the warrant of arrest against accused Lydio Arcilla. Within ten (10) days thereafter, he forwarded the papers to the Provincial Prosecutor's Office.

For her part, respondent clerk of court averred that she gave complainant Lourdes Arcilla copies of the documents requested by her.

Then Court Administrator Alfredo Benipayo made the following findings, quoted in part:

"A. GROSS IGNORANCE OF THE LAW ON THE PART OF RESPONDENT JUDGE

x x x

Contrary to complainant's allegation, respondent Judge has actually examined in writing and under oath the complaining witness by searching questions which were answered as evidenced by the documents marked Annexes 1 and 2 to his comment.

However, respondent Judge acted with undue haste in issuing the warrant of arrest against herein complainant Lydio Arcilla without giving him the opportunity to present counter-affidavits. This is obvious from the annexes to his comment, showing that the complaint was filed and the preliminary investigation was conducted on the same day and soon thereafter order was issued for the arrest of the accused. Respondent Judge, therefore, abused his authority, indicative of partiality in favor of complaining witness.

While before, it was mandatory for the investigating judge to issue a warrant for the arrest of the accused if he found probable cause, the rule now is that the investigating judge's power to order the arrest of the accused is limited to instances in which there is a necessity for placing him in custody "in order not to frustrate the ends of justice." The arrest of the accused can be ordered only in the event the prosecutor files the case and the judge of the Regional Trial Court finds probable cause for the issuance of the warrant of arrest (Flores vs. Sumaljag, A.M. No. MTJ-97-1115, June 5, 1998, 290 SCRA 568-579).

Anent the allegation of an in-chamber arrangement with complainant Lourdes Arcilla regarding a proposed compromise by the payment of one

half (1/2) of the claim of complaining witness for his temporary liberty, proof thereof is insufficient to substantiate the accusation against respondent Judge.

Indeed, respondent judge has not learned a lesson from the four other cases filed against him where he was thrice fined and once warned that commission of the same or similar acts would be dealt with severely.

#### A. IRREGULARITY IN THE PERFORMANCE OF DUTY BY RESPONDENT CLERK OF COURT

While it is true that respondent Clerk of Court Bajo complied with the request of complainants by furnishing them with copies of the documents enumerated in Annex 6, comment, respondent Clerk of Court failed to give them certified copies of said documents that they had asked of her. One of the mandated duties of the Clerk of Court is to prepare for any person demanding the same, a copy certified under the seal of the court of any paper, record, order, judgment or entry in his office for the fees prescribed by law. This duty emanates from the long established principle holding that court records are public records (*Ramirez vs. Racho*, A.M. No. P-96-1213, August 1, 1996, 260 SCRA 244-249).

The Court Administrator recommended that (1) respondent, judge "be ordered fined in the amount of P10,000.00, chargeable against the amount that has been withheld from his retirement benefits" "considering the four other administrative cases against respondent Judge Lucio P. Palaypayon, MTC, Tinambac, Camarines Sur (retired) in the past," and (2) Respondent Bajo "be reprimanded for her failure to observe the rudiments of good conduct in her dealings with the public, with the warning that repetition of the same or similar conduct would be dealt with more severely."

We find the Court Administrator's conclusions and recommendation well-taken.

The procedure for conducting preliminary investigations in criminal cases requires that the investigating officer, if he finds a ground to continue with the inquiry, issue a subpoena to the respondent and require him to submit counter-affidavits and evidence in his behalf.<sup>[1]</sup> This is in deference to the time-honored principle of due process and function of a preliminary investigation in protecting respondents from malicious prosecution and the ignominy and expense of a public trial.

While respondent judge conducted a preliminary investigation on the same day the complaint for estafa was filed, however, he did not notify the accused to give him an opportunity to submit counter-affidavits and evidence in his defense. Worst, on the same day, respondent judge issued the warrant of arrest. Clearly, his actuations manifest his ignorance of procedural rules and a reckless disregard of the accused's basic right to due process. It should be observed that the complaint was filed obviously to compel complainants to pay accrued rentals.<sup>[2]</sup> We thus hold that respondent judge is guilty not only of gross ignorance of law, but also of grave abuse of authority.