

THIRD DIVISION

[A.M. No. RTJ-21-006 [Formerly OCA IPI-18-4802-RTJ], March 15, 2021]

ZAHARA PENDATUN MAULANA, COMPLAINANT, VS. JUDGE OSCAR P. NOEL, JR., REGIONAL TRIAL COURT, BRANCH 35, GENERAL SANTOS CITY, SOUTH COTOBATO, RESPONDENT.

DECISION

HERNANDO, J.:

This resolves the Complaint^[1] filed by Zahara Pendatun Maulana (complainant) against respondent Judge Oscar P. Noel, Jr. (respondent) of the Regional Trial Court (RTC), Branch 35, General Santos City, South Cotobato.

Complainant alleged that she is one of the respondents in the case entitled "*People of the Philippines v. Misuari Matabalo Brahim and Fatima Zahara [Pendatun] Maulana*," where she was charged with violation of Republic Act No. 10591 (RA 10591), or An Act Providing for a Comprehensive Law on Firearms and Ammunition and Providing Penalties for Violations.^[2] The firearms involved in the case were seized by virtue of Search Warrant Nos. 17-98^[3] and 17-99^[4] by the law enforcers, which were issued by respondent Judge on July 11, 2017.

While searching the house of complainant located at Block 2, Lot 19, Phase I, Dona Soledad Subdivision, Barangay Labangal, General Santos City, the following seized firearms were identified: one (1) unit caliber 40 pistol HS with SN W50706; one (1) unit MS Parabellum 9mm caliber pistol with SN R59108; one (1) unit caliber 380 (Pietro beretta) Italy made with SN E48994Y; several live ammunition for M14 rifles; and several magazines containing live ammunition for M16 rifles.^[5]

On September 25, 2017, the Office of the Prosecutor (OCP) of General Santos City issued a Resolution^[6] dismissing the complaint for violation of RA 10591 against complainant "for Lack of Evidence and/or Probable Cause"^[7] citing the Certification^[8] dated September 14, 2017 obtained by the OCP from the Firearms and Explosive Office (FEO) which indicated that complainant is the licensed/registered holder of one (1) unit caliber 40 pistol HS with SN W50706, while Misuri Matabalao Brahim (Brahim), complainant's corespondent in the above-cited criminal case, is the licensed/registered holder of one (1) unit MS Parabellum 9mm caliber pistol with SN R59108.

As for the one (1) unit caliber 380 (Pietro beretta) Italy-made with SN E48994Y, the prosecutor found that although the said firearm was covered by a mere Letter Order and Acknowledgment Receipt of Equipment (ARE),^[9] it was not one of the items stated in Search Warrant Nos. 17-98 and 17-99.

With respect to the live ammunition for M14 rifles and magazines containing live ammunition for M16 rifles, the prosecutor found reasonable ground to believe that they were "government issued properties under the custody of Corporal Danny K. Mingka in the performance of his duties as member of the Philippine Army and who was a detailed security"^[10] of complainant.

Complainant's counsel thus filed a *Motion to Release Seized Items*^[11] dated September 29, 2017 praying for the release of the seized firearms to their respective owners. Prior to the scheduled hearing of the said motion on November 16, 2017, respondent Judge allegedly directed complainant to proceed to his chambers and asked her to shoulder the amount of P300,000.00 representing the expenses that will be incurred which he, his court personnel, and the government prosecutor will incur when they travel to Camp Crame, Manila, to personally verify licenses for the subject firearms.^[12] During the actual hearing, complainant's counsel, instead, moved for the withdrawal of the Motion to Release Seized Items.^[13]

In open court, however, respondent Judge allegedly made it appear that it was complainant who moved for respondent Judge and his court personnel to have the licenses personally verified, and offered to shoulder their travel expenses. Thus, in an Order^[14] dated November 16, 2017, respondent Judge granted the supposed prayer of complainant, thus:

x x x x movant prayed that the Court as well as his personnel and the government prosecutor in order to expedite the proceedings of the case to go to Camp Crame and personally verify the records of the movant with the said office as well as the authenticity of their license, with the undertaking to shoulder the expenses of the same. There being no objection on the part of the government prosecutor, the motion is hereby GRANTED. x x x x^[15]

In his Comment^[16] dated May 11, 2018, respondent Judge clarified that he issued the November 16, 2017 Order based on the manifestation of complainant's counsel during the hearing of the Motion to Release Seized Items. In particular, he maintained that during the hearing, complainant's counsel requested the court and court personnel, including the government prosecutor, to personally verify the authenticity of the seized firearms and their licenses at complainant's expense.^[17] Respondent judge presented the transcript of stenographic notes (TSN) taken during the hearing. He also pointed out that complainant did not file any motion for reconsideration or amendment of the November 16, 2017 Order.^[18]

Respondent also emphasized that complainant failed to submit to the court a copy of the License to Own and Possess Firearm (LTOPF) with respect to one (1) unit caliber 380 (Pietro beretta) Italy-made with SN E48994Y, and that the ARE pertaining to the said seized firearm was not the LTOPF which would thus warrant its release to complainant Respondent judge disclaimed any fault in the delay of the release of the seized firearms, claiming that any such delay is attributable to complainant's failure to submit the proper documents requested by the court.^[19]

In his Supplemental Comment^[20] dated June 8, 2018, respondent further clarified

that complainant presented a mere photocopy of the September 14, 2017 Certification from the FEO. However, when the original was submitted, several inconsistencies were observed in the signatures therein, including the brand of firearm it referred to.^[21] Anent the allegation that he demanded PhP300,000.00 from complainant prior to the November 16, 2017 hearing, respondent vehemently denied the same, claiming that he could not possibly make such a demand in his chambers when the conversations could be easily overheard by the court staff.^[22]

On August 16, 2018, the Office of the Court Administrator (OCA) received an *Affidavit of Desistance* dated August 9, 2018 allegedly executed by complainant where she manifested that she completely and absolutely exonerates respondent of any liability.^[23] In particular, complainant claimed in her affidavit that "she was greatly mistaken in her perception of the facts and the surrounding circumstances that led her to believe that respondent committed the acts she complained of."^[24]

Complainant also admitted in her affidavit that she, in fact, personally asked her counsel to pray in open court that she was willing to pay P300,000.00 for the personal verification of the authenticity of licenses relative to the seized firearms. To verify the authenticity of the affidavit, the OCA contacted complainant to confirm if she, in fact, executed the same, to which she replied in the negative.^[25]

Due to the varying factual accounts of complainant and respondent prior and during the hearing on November 16, 2017, and complainant's Affidavit of Desistance dated August 9, 2018, the OCA, in its Report^[26] dated May 22, 2019, recommended to this Court that the instant complaint be referred to the Executive Justice of the Court of Appeals, Cagayan de Oro City Station for further investigation.

In a Resolution^[27] dated July 31, 2019, this Court, upon recommendation of the OCA, referred the administrative complaint to the Executive Justice of the Court of Appeals, Cagayan de Oro Station, for investigation, report, and recommendation. The complaint was eventually raffled to Associate Justice Angelene Mary W. Quimpo-Sale as Investigating Justice.

Findings of the Investigating Justice:

Notably, during the January 13, 2020 hearing before the Investigating Justice, complainant confirmed the filing of her affidavit stating her desistance in the administrative charge against respondent.^[28] In this regard, the Investigating Justice, in her Report^[29] dated January 24, 2020, found that:

From the foregoing, it is clearly shown that complainant freely and voluntarily executed her affidavit of desistance. Her conscience bothered her when things got out of hand because she merely wanted to secure the release of her two firearms. When asked twice about the effect of her desistance, she stated that she wants the court to dismiss the administrative complaint against respondent.^[30]

During the January 13, 2020 hearing before the Investigating Justice, complainant attested to the veracity of the contents of her affidavit and confirmed all statements therein. After ascertaining that complainant freely executed the *Affidavit of Desistance*, the Investigating Justice recommended posthaste the dismissal of the administrative charge against respondent.^[31] In a Resolution^[32] dated June 10, 2020, this Court referred the January 24, 2020 Report of the Investigating Justice to the OCA for evaluation, report and recommendation.

Report and Recommendation of the OCA:

In its Memorandum^[33] dated November 19, 2020, the OCA disagreed with the recommendation of the Investigating Justice. The OCA explained that the desistance of complainant did not necessarily warrant the dismissal of the administrative complaint against respondent.

The OCA then found that respondent breached the norms and standards of the court, and committed gross ignorance of the rules when he issued his November 16, 2017 Order.^[34] The OCA stressed that it is not the duty of respondent to personally verify the authenticity of the certification submitted to him, and that respondent only had to rely on the Certification of the FEO and the ARE submitted by complainant in deciding the issue of possession or non-possession of valid licenses for the seized firearms.^[35]

The OCA thus found respondent liable for gross ignorance of the law, and recommended that he be "fined Twenty Thousand Pesos (P20,000.000) [with warning] that a commission of any of the same or similar act shall be dealt with more severely."^[36]

Our Ruling

We agree with the findings of the OCA but with modification as to the recommended penalty.

The complaint should not be dismissed solely on the basis of complainant's affidavit of desistance.

The recommendation of the Investigating Justice to dismiss the complaint was solely grounded on the complainant's affidavit of desistance and her predisposition to have the administrative case against respondent dismissed as testified by her during the January 13, 2020 hearing before the Investigating Justice. Unfortunately, the Investigating Justice's Report contained no discussion whatsoever on the facts and issues presented for investigation and evaluation.