

## THIRD DIVISION

**[ A.M. No. RTJ-14-2390 (Formerly OCA I.P.I. No. 12-3923-RTJ), August 13, 2014 ]**

**JOSEPHINE JAZMINES TAN, PETITIONER, VS. JUDGE SIBANAH E. USMAN, REGIONAL TRIAL COURT, BRANCH 28, CATBALOGAN CITY, SAMAR, RESPONDENT.**

### DECISION

**PERALTA, J.:**

Before this Court is an administrative complaint<sup>[1]</sup> filed by Josephine Jazmines Tan (*complainant*) against Judge Sibannah E. Usman (*respondent*), Presiding Judge of the Regional Trial Court of Catbalogan City, Branch 28, Samar for bribery and corruption, relative to Civil Case No. 7681 and *Criminal Case No. 6536*.

Complainant is one of the plaintiffs and accused in Civil Case No. 7681 and Criminal Case No. 6536, respectively, then pending before Branch 28, presided by respondent. She claimed that relative to said cases, respondent was paid P250,000.00 by their opponent, a certain Allan Tan, through Jaime Cui, Jr., as evidenced by a receipt stating: "*Received P250,000.00 (Two Hundred Fifty Thousand Pesos) from Mr. Jaime Cui, Jr. as full payment in CC No. 6536 & 7681 to be given to Judge S.E. Usman*" and signed by Nilda C. Cinco, OIC-Branch Clerk of Court of the same court.

Complainant further accused respondent of knowingly issuing an unjust interlocutory order when he cited her in contempt. She, however, pointed out that in A.M. No. RTJ-11-2266,<sup>[2]</sup> the Court found respondent guilty of gross ignorance of the law. Complainant now prays that respondent be meted the penalty of dismissal from service for bribery and corruption.

On August 14, 2012, the Office of the Court Administrator (OCA) directed respondent to comment on the charges of Gross Misconduct, Knowingly rendering an Unjust Order, Abuse of Power and Dishonesty against him.<sup>[3]</sup>

In his Comment<sup>[4]</sup> dated October 9, 2012, respondent argued that since complainant's allegations and issues had already been raised and threshed out in A.M. No. RTJ-11-2266, following the principle of *res judicata*, the instant complaint should not be given due course.

Respondent countered that the allegations of bribery and corruption are baseless and unfounded. He denied that he received any money from Jaime Cui, Jr. or from anyone relative to said subject cases. He claimed that complainant merely concocted and falsified the acknowledgment receipt wherein she made it appear that Nilda C. Cinco received the money and issued the receipt in behalf of respondent.

Meanwhile, Nilda C. Cinco, in her Affidavit<sup>[5]</sup> dated October 8, 2012, denied that she received any amount of money from Jaime Cui, Jr., nor did she issue any acknowledgment receipt thereto.

Jaime Cui, Jr., likewise, in his Affidavit<sup>[6]</sup> dated October 8, 2012, vehemently denied even in open court on August 28, 2009 that he disbursed a substantial amount of money to respondent or to Nilda Cinco, in any occasion or for any purpose.

Finally, respondent pointed out that when complainant alleged that she received information about the alleged bribery sometime in February or March 2009, said subject case, particularly Civil Case No. 7681 was still being tried before Branch 29 and was only transferred and received by RTC Branch 28 on June 25, 2009. Moreover, respondent judge argued that Allan Tan was killed on October 28, 2008, hence, it is impossible that he gave orders to Jaime Cui, Jr. on the alleged dates where bribery took place.

In a Memorandum dated August 12, 2013, the OCA, due to the conflicting versions of the parties, recommended that the instant administrative complaint be referred to the Presiding Justice of the Court of Appeals in Cebu City, for raffle among the justices in Cebu City on who shall conduct the investigation. The complaint was later on raffled to Court of Appeals Justice Marilyn B. Lagura-Yap.

After investigation and evaluation, in her Report,<sup>[7]</sup> the Investigating Justice recommended that the instant complaint be dismissed for lack of evidence. The Investigating Justice opined that the complaint-affidavit and the "receipt" given by complainant do not constitute as substantial evidence to prove that respondent judge committed bribery or corruption.

## **RULING**

The Court adopts the findings of the Investigating Justice.

It is settled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant. Thus, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which she bases her claim, respondent is under no obligation to prove his exception or defense.<sup>[8]</sup>

As settled, an accusation of bribery is easy to concoct but difficult to prove. The complainant must present a panoply of evidence in support of such an accusation. Bare allegation would not suffice to hold respondent liable.<sup>[9]</sup> In the absence of showing direct and convincing evidence to prove the alleged bribery, respondent judge cannot be held guilty of said charge. In the instant case, no evidence was presented showing that respondent in fact accepted or received money or anything from Cui in relation to the subject cases. Neither was there any evidence to show that respondent judge unlawfully or wrongfully used his official function for his own benefit or personal gain.

By merely presenting a "receipt" with a tenor that money in the amount of P250,000.00 was received by Nilda Cinco in behalf of respondent to support an accusation of bribery will not stand alone. As correctly observed by the OCA, while it