

SECOND DIVISION

[A.M. No. MTJ-09-1737, February 09, 2011]

**LYDELLE L. CONQUILLA, COMPLAINANT, VS. JUDGE LAURO G. BERNARDO, MUNICIPAL TRIAL COURT, BOCAUE, BULACAN
RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is an administrative complaint for usurpation of authority, grave misconduct, and gross ignorance of the law filed by Lydelle L. Conquilla (complainant) against Judge Lauro G. Bernardo (respondent judge), Presiding Judge of the Municipal Trial Court (MTC) of Bocaue, Bulacan.

The Facts

In a verified complaint dated 30 July 2008, complainant Conquilla charged respondent judge with usurpation of authority, grave misconduct, and gross ignorance of the law.

Complainant alleged that on 4 July 2008, a criminal complaint for direct assault was filed against her before the MTC of Bocaue, Bulacan. The complaint was signed by Police Chief Inspector Rizalino Andaya of the Bocaue Police Station.

On 8 July 2008, respondent judge conducted a preliminary investigation and found probable cause to hold the complainant for trial for the crime of direct assault. Respondent judge then issued a warrant of arrest dated 8 July 2008, with the bail fixed at P12,000.

On 10 July 2008, upon motion of complainant, respondent judge issued an order reducing the bail for complainant's provisional liberty to P6,000. On the same date, complainant posted cash bail of P6,000 for her provisional liberty.

Complainant then filed an administrative complaint, alleging that under A.M. No. 05-08-[2]6-SC, first level court judges no longer have the authority to conduct preliminary investigations. Thus, complainant avers that respondent judge committed an illegal act constituting gross ignorance of the law and procedure when he conducted the preliminary investigation and issued the warrant of arrest. Complainant claims that the hasty issuance of the warrant of arrest was without legal basis and unjustly prejudiced complainant and deprived her of her liberty. Complainant submits that respondent judge usurped the power of the prosecutor, who was not even given the chance to comment on complainant's Motion to Reduce Bail. Furthermore, complainant alleges that when she learned about the warrant of

arrest, she called respondent judge's wife, who said "she would help in having the bail reduced to P6,000.00 and would have the case for direct assault against herein complainant dismissed provided herein complainant cancel the wife's debt of P35,000.00 and provided that herein complainant loan the wife an additional amount of P50,000.00."^[1]

In his Comment, respondent judge states that he issued the warrant of arrest in good faith because he was convinced that there was probable cause and that it was necessary to place the complainant under immediate custody to prevent a frustration of justice. Although respondent judge knew that the Supreme Court already amended Rules 112 and 114 of the Revised Rules on Criminal Procedure by removing the conduct of the preliminary investigation from judges of first level courts, he argues that the power to personally determine probable cause in the issuance of a warrant of arrest cannot be revoked. Besides, even if such power to determine probable cause was indeed revoked by the amendment, respondent judge submits that technical rules can be relaxed if their implementation will result in injustice.

Respondent judge further states that he did not usurp the power of the prosecutor when he reduced the bail considering that under Section 20 of Rule 114, the court may increase or decrease the bail upon good cause.

Lastly, respondent judge denies any knowledge of the alleged conversation and transaction between complainant and his wife.

The OCA's Report and Recommendation

In its Report dated 12 February 2009, the OCA found respondent judge guilty of gross ignorance of the law for his patent and unjustified violation of the provisions of the Resolution in A.M. No. 05-8-26-SC. The OCA stated that the Resolution in A.M. No. 05-8-26-SC, which took effect on 3 October 2005, removed the conduct of investigation from the scope of authority of first level courts judges. Had respondent judge been more prudent in understanding the pertinent provisions of the Resolution in A.M. No. 05-8-26-SC, which are very clear and concise, no administrative complaint would have been filed against him.

The OCA, however, found the charge of usurpation of authority without merit. The OCA agreed with respondent judge that the power to determine the amount of bail is vested in the judge.

The OCA recommended (a) that the administrative complaint against respondent judge be re-docketed as a regular administrative matter; and (b) that respondent judge be fined in the amount of P20,000.00 for gross ignorance of the law, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

The Ruling of the Court

In this case, respondent judge makes it appear that he merely conducted a preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest. However, the records of the case

clearly show that respondent judge indeed conducted a preliminary investigation on 8 July 2008. After finding probable cause to hold complainant for trial for the crime of direct assault, respondent judge then issued a warrant for her arrest. That respondent judge conducted a preliminary investigation and not just a preliminary examination to determine existence of probable cause for the issuance of a warrant of arrest is evident in his Order dated 8 July 2008, which reads:

ORDER

The undersigned, after personal examination of the witnesses in writing and under oath, **finds that a probable cause exists and there is sufficient ground to hold the accused LYDELLE L. CONQUILLA for trial for the crime of DIRECT ASSAULT as charged in the complaint.** In order not to frustrate the ends of justice, there is a need to place the accused in immediate custody. Let warrant immediately issue for his [sic] arrest hereby fixing bail in the amount of P12,000.00 for his provisional liberty.^[2]

SO ORDERED.

Bocaue, Bulacan, July 8, 2008.

(signed)
HON. LAURO G. BERNARDO
Judge

Furthermore, after complainant posted bail on 10 July 2008, respondent judge then issued an Order dated 10 July 2008, ordering the complainant's release and setting the case for her arraignment on 3 September 2008.

The conduct of preliminary investigation by respondent judge was in direct contravention of A.M. No. 05-8-26-SC, which took effect on 3 October 2005, amending Rules 112 and 114 of the Revised Rules on Criminal Procedure by removing the conduct of preliminary investigation from judges of the first level courts. Thus, under Section 2 of Rule 112, only the following officers are authorized to conduct preliminary investigations: (a) Provincial or City Prosecutors and their assistants; (b) National and Regional State Prosecutors; and (c) Other officers as may be authorized by law. Furthermore, Section 5 of Rule 112 provides:

SEC. 5. When warrant of arrest may issue. â€

(a) By the Regional Trial Court. â€ Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on records clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor

to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

(b) *By the Municipal Trial Court.* ‘**When required pursuant to the second paragraph of section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court SHALL be conducted by the prosecutor.**’ The procedure for the issuance of a warrant of arrest by the judge shall be governed by paragraph (a) of this section. (Emphasis supplied.)

Clearly, MTC judges are no longer authorized to conduct preliminary investigation.

In this case, the crime charged against complainant was direct assault against a public school teacher, who is a person in authority under Article 152^[3] of the Revised Penal Code.^[4] Under Article 148 of the Revised Penal Code, when the assault is committed against a person in authority while engaged in the performance of his official duties or on the occasion of such performance, the imposable penalty is *prision correccional* in its medium and maximum periods. The duration of the penalty of *prision correccional* in its medium and maximum periods is 2 years, 4 months and 1 day to 6 years. Thus, the offense charged against complainant requires the conduct of preliminary investigation as provided under Section 1 of Rule 112 of the Rules of Court, which reads:

SECTION 1. *Preliminary investigation defined; when required.* ‘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.

Except as provided in Section 6 of this Rule, **a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and (1) day without regard to the fine.** (Emphasis supplied.)

It was therefore incumbent upon respondent judge to forward the records of the case to the Office of the Provincial Prosecutor for preliminary investigation, instead of conducting the preliminary investigation himself.

Rule 3.01, Canon 3 of the Code of Judicial Conduct mandates that a judge shall be faithful to the law and maintain professional competence. Indeed, competence and diligence are prerequisites to the due performance of judicial office.^[5] Section 3, Canon 6 of the New Code of Judicial Conduct^[6] requires judges to maintain and enhance their knowledge and skills to properly perform their judicial functions, thus: