

EN BANC

[A.M. No. MTJ-08-1703 (Formerly A.M. OCA I.P.I. No. 07-1875-MTJ), June 17, 2008]

RICKY GARAY, ARSENIO PALAGANA, FERNANDO MEJES, SONNY LOGRONIO, FELIPE ONGY, WENCESLAO BAYANI, RANDY RAPA, JUANITO STA. ANA, FABIAN MENDOZA, AND VIOLETO BEDONA, JR., COMPLAINANTS, VS. JUDGE NICASIO V. BARTOLOME, MTC, BR. 1, STA. MARIA, BULACAN, RESPONDENT.

DECISION

VELASCO JR., J.:

Complainants are the accused in Criminal Case Nos. 4-227-05 and 4-228-05 entitled *People v. Ricky Garay, et al.* In this administrative complaint, they ask that respondent Judge Nicasio V. Bartolome of the Municipal Trial Court, Branch 1 in Sta. Maria, Bulacan be investigated and a corresponding penalty be meted against him for violation of the rules on criminal procedure.

Below are the facts found by the Office of the Court Administrator (OCA) pertinent to this administrative complaint:

On April 28, 2005, the day the complaints for qualified theft of bus starters and different tools amounting to PhP 187,000 were filed against complainants, Judge Bartolome issued a warrant of arrest against them. On the strength of the warrant, the complainants were detained in the provincial jail. Thereafter, Judge Bartolome conducted a preliminary investigation and the complainants filed their counter-affidavits. On August 12, 2005, Judge Bartolome conducted a clarificatory hearing where only accused Garay and his counsel attended. After the said hearing, Judge Bartolome issued an order submitting the case for resolution. On December 27, 2005, three months after the clarificatory hearing, he issued a Joint Resolution that was mailed only on March 8, 2006. The pertinent portion of the Joint Resolution is hereunder quoted:

In view thereof, and for lack of jurisdiction having found probable cause, let the records of these two (2) cases be forwarded to the Office of the PROVINCIAL prosecutor for lack of jurisdiction and for further Preliminary Investigation together with the bodies of the accused Fabian Mendoza, Juanito Sta. Ana and Violetto Bedona, Jr., and with the information that the other accused named Arsenio Palaganas, Randy Rapa and Sonny Logronio are still at large. Therefore, Sonny Logronio is still not qualified to submit counter-affidavits who [remains] beyond the jurisdiction of this Court.

SO ORDERED.

In its investigation and evaluation of the instant complaint against Judge Bartolome, the OCA noted that the criminal case for qualified theft involving PhP 187,000 falls clearly within the jurisdiction of the Regional Trial Court. According to the OCA, based on the foregoing facts, it was apparent that Judge Bartolome was grossly ignorant of the procedure to be observed during a preliminary investigation as outlined in Sections 3 and 5, Rule 112 of the *Revised Rules of Criminal Procedure*. Sec. 3 of the rule requires, among others, that:

- (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause.
- (b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

x x x x

- (c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.
- (d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.
- (e) The investigating officer may set a hearing but without the right to examine or cross-examine. They may however, submit to the investigating officers questions which may be asked to the party or witness concerned. The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.
- (f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (Emphasis ours.)

Sec. 5 of the same rule provides:

SEC. 5 Resolution of the investigating judge and its review.--Within ten (10) days after the preliminary investigation, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor, or to the Ombudsman or his deputy in cases of