

EN BANC

**[A.M. NO. RTJ-07-2059 (FORMERLY A.M. OCA
I.P.I. NO. 06-2419-RTJ), August 10, 2007]**

**AUGUSTO C. CAESAR, COMPLAINANT, VS. JUDGE ROMEO M.
GOMEZ, REGIONAL TRIAL COURT, BRANCH 25, MAASIN CITY,
SOUTHERN LEYTE, RESPONDENT.**

DECISION

NACHURA, J.:

Augusto C. Caesar (Caesar) filed the instant administrative complaint against Judge Romeo M. Gomez of the Regional Trial Court (RTC) of Maasin, Southern Leyte, Branch 25, seeking his dismissal from the service for alleged grave misconduct and gross ignorance of the law.

Caesar was the private complainant in a criminal case for estafa filed against Norman Victor M. Ordiz (Ordiz) with the RTC of Maasin, Southern Leyte, docketed as Criminal Case No. 04-02-2578 and raffled to Branch 25 presided by the respondent judge.

The criminal information against Ordiz was filed in March 2004, but several months passed before he was arraigned. The delay in the arraignment was due to several motions for postponement filed by the accused, which were all granted by the respondent judge. The pre-trial conference was finally conducted on January 31, 2005, and the case was then set for the prosecution's presentation of evidence. ^[1]

Before the scheduled date of trial, Ordiz allegedly negotiated to settle the civil aspect of the case and promised to return Caesar's Two Hundred Thousand Pesos (P200,000.00) and pay Fifty Thousand Pesos (P50,000.00) for attorney's fees and other expenses. Ordiz, however, did not fulfill his promise. A rumor circulated that instead of paying Caesar P250,000.00, Ordiz gave respondent judge P200,000.00 on the promise that the latter will dismiss the case. ^[2]

On April 11, 2005, Ordiz filed a Motion to Dismiss, ^[3] asserting that he did not commit estafa. He claimed that there was novation in the original relations between him and Caesar.

Caesar opposed Ordiz's motion, arguing that the motion was in reality a motion to quash which, under Section 1, Rule 117 of the Rules of Criminal Procedure, should be filed before arraignment. The filing of the motion after the pre-trial conference is, thus, irregular. Likewise, the grounds relied upon in the motion to dismiss are not among the grounds set forth in Section 3, Rule 117, and are but defenses which Ordiz must prove during the trial. Therefore, they cannot be made a basis for the quashal of the information. Lastly, he argued that novation does not extinguish criminal liability. ^[4]

On July 18, 2005, Judge Gomez granted the Motion to Dismiss.^[5] In dismissing the case, he ratiocinated that when Caesar backed out of the agreement and demanded the return of the advance payment in the amount of P790,000.00, the original agreement to sell was novated and converted into an ordinary creditor-debtor relationship. The acceptance of the partial return is sufficient proof of novation and has effectively rescinded their original transaction, thus, preventing the incipience of criminal liability for estafa. Respondent judge also added that Ordiz could not be held criminally liable under Article 316(1) of the Revised Penal Code (1) because the agreement he signed was not a contract of sale, but only an agreement to sell. Furthermore, the agreement provides that title to the property shall be delivered to the vendee only upon full payment of the purchase price which Caesar failed to do. Clearly, the non-delivery of the property sold was due to Caesar's fault. As such, there is no basis for Caesar to claim that he suffered damage under the contract or by reason of the non-delivery.

Caesar filed a Motion for Reconsideration and For Inhibition,^[6] but Judge Gomez denied the same.^[7] Respondent judge ruled that the arguments raised by Caesar had been sufficiently explained in the Order sought to be reconsidered. He also denied the motion for inhibition holding that divergence of opinion between counsel and the judge is not a proper ground for inhibition. According to him, opinions framed in the course of judicial proceedings, as long as they are based on the evidence presented, do not prove bias or prejudice.

Caesar claims that Judge Gomez employed slanted logic to justify his premeditated corrupt objective to favor Ordiz, disregarding, in the process, the prohibition in Rule 117 of the Rules of Criminal Procedure. The dismissal of the criminal case by respondent judge prior to the presentation of the evidence by the prosecution is a travesty of justice.^[8]

In his Comment,^[9] respondent judge denied the charges against him. On the charge of grave misconduct, he explained that the motions for postponements filed by the accused were all meritorious and so he granted the same. Respondent judge also denied the charge of bribery against him, asserting that:

[I]t has no basis except the thin air circulating around, as if private complainant only sniffed the air and say, "huh pay off". But how could private complainant sniff the thin air in the Halls of Justice in Maasin City when he went there only when his case was scheduled for hearing? And when the Order of dismissal was issued he was maybe already in the United States? Granting without admitting that such rumors existed, who originated the same? How reliable is his knowledge about it? How true is it? To the simple mind of the undersigned this charge is only a product of the fertile imagination of private complainant[,] no such rumors circulated in the Bulwagan, for who is stupid enough to pay P200,000 to a judge for an alleged payable amount of only P250,000 and for a criminal case that is easily dismissible? This only bolsters the claim of accused that of the P790,000 returnable amount to private complainant, per previous agreement, P640,000 has already been paid or returned.^[10]

On the charge of gross ignorance of the law, respondent judge maintained that he did not disregard the basic procedural rules. He reasoned that:

(1) The motion to dismiss was still given due course when at the time it was filed the accused was already arraigned, pre-trial had already been held, the case was already set for the reception of the prosecution's evidence and the accused already committed to private complainant and counsel to return the amount of P200,000 and to reimburse the amount of P50,000 as attorney's fees.

This reasoning of private complainant is quite inaccurate because a motion to dismiss is not like a motion to quash which must be filed normally before arraignment. A motion to dismiss in criminal cases is usually filed on the ground of insufficiency of evidence. Sometimes this is termed as demurrer to evidence. The motion to dismiss as understood in this connection may be filed after the pre-trial or after the presentation of the prosecution's evidence if it can be clearly seen that from the evidence presented the crime was not actually committed or that they are not sufficient to prove the guilt of the accused beyond reasonable doubt.

In criminal cases, after the pre-trial, the evidence admitted and the facts stipulated became immutably established, so that they need not be proved in the trial. So that in [the] pre-trial there is already presentation of evidence. And after the pre-trial based on the evidence admitted and the facts stipulated, a motion to dismiss may be filed if it becomes clear that the offense charge was not really committed.

Now in [the] instant case, during the pre-trial, the following evidence and facts were admitted and stipulated.

1) Contract/Agreement Exh. "A", (Annex "G") between accused and private complainant that a certain portion of agricultural land including the improvements existing thereon located at Flordeliz Machoron, Southern Leyte, denominated as Lot No. 70 containing an area of 3,000 sq. meters will be sold to the vendee in the amount of P1,200,000 and will be paid in three (3) installment payments.

That the first installment payment will be paid to the vendee upon execution of the Deed of Absolute Sale of a portion of land in the amount of P400,000;

That the second installment payment will be paid four months after the payment of the first installment plan;

That the third or last installment payment will only be paid to the vendor upon execution and turn-over of the Original Certificate of Title to the vendee.

That the title of the said property shall remain in the name of the vendor.

A perusal of the foregoing instrument Exhibit "A" (Annex "G") would

indeed reveal that it is not a Deed of Sale, rather it is only an agreement to sell. And private complainant was not yet obligated to make any partial payment to the accused because, per said agreement, the first payment of P400,000 shall be paid only upon the execution of the Deed of Absolute Sale. On the other hand[,] the accused is not yet under obligation to deliver the land because no sale has yet been perfected, or that the last installment has not yet been paid. That being so, the accused is not yet under obligation to own the property because the obligation to deliver the same has not yet accrued.

2) That of the P790,000 received by the accused from the private complainant as partial payment of the subject lot, P640,000 has been returned per their agreement, the first amount returned was P140,000 and the second amount was P500,000 paid by defense counsel Atty. Nicasio Nueve to private Prosecutor Atty. Francisco Escaño.

Because of the documentary evidence admitted and [the] facts stipulated during the pre-trial hereto attached as Annex "H", the accused filed a motion to dismiss x x x .^[11]

Caesar filed his Reply to Comment,^[12] reiterating the allegations in his complaint-affidavit.

In its Report and Recommendation, the Office of Court Administrator (OCA) found that:

[T]he charge of bribery against the respondent judge should be dismissed as complainant failed to present any evidence to prove that respondent judge received from the accused the amount of Two Hundred Thousand Pesos (P200,000.00) in exchange of the dismissal of the criminal case.

However, the complaint for gross ignorance of the law is meritorious. Respondent judge tried to evade administrative liability by claiming that he dismissed the criminal case pursuant to Section 23, Rule 119 of the Revised Rules of Court x x x.

However, the rule on demurrer to evidence is inapplicable in the case as the prosecution has not yet rested its case at the time the motion to dismiss was filed. The rule is very clear that a criminal complaint may be dismissed due to insufficiency of evidence only after the prosecution has rested its case. In the subject case, trial had not even commenced when respondent judge dismissed the criminal complaint.

Moreover, respondent judge dismissed the criminal complaint on its merit and not due to insufficiency of evidence of the prosecution. He categorically stated in his order dismissing the complaint that "the original agreement/contract to sell was novated and/or rescinded by agreement of the parties, so estafa did not attach". Nowhere in the decision was it stated that the case was being dismissed for insufficiency of evidence of the prosecution.

That demurrer to evidence may be given due course only after the prosecution has already rested its case is a basic rule of procedure that every member of the judiciary ought to know. Judges are called upon to exhibit more than just cursory acquaintance with statutes and procedural rules. Basic rules must be at the palms of their hands as they are expected to maintain professional competence at all times. Their failure to observe the basic laws and rules are not only inexcusable but renders them susceptible to administrative sanction. Where the law involved, as in this case, is simple and elementary, lack of conversance therewith constitutes gross ignorance of the law.^[13]

The Court agrees with the OCA.

Caesar charges the respondent judge with grave misconduct, claiming that the latter received P200,000.00 as consideration for the dismissal of Criminal Case No. 04-02-2578. But as explained by the OCA, the charge lacks substantiation. Undeniably, the alleged "pay-off" was only "a rumor that circulated in the halls of justice of Maasin City."^[14]

For a judge to be rendered culpable in any administrative proceeding, there should be a clear and sufficient evidence of his misconduct.^[15] In this case, Caesar failed to substantiate his allegation of bribery. Accordingly, we find no cause to controvert the findings of the OCA absolving the respondent judge from the charge of grave misconduct.

In addition, Caesar condemns the respondent judge for rashly dismissing Criminal Case No. 04-02-2578. He claims that the dismissal of the estafa case against Ordiz was erroneous and constitutes gross ignorance of the law. The respondent judge, on the other hand, maintains that he did not disregard any procedural rule in granting the motion to dismiss. As justification, he declares that Ordiz's Motion to Dismiss is akin to a demurrer to evidence, which may be filed after the pre-trial or after the prosecution has rested its case, if the evidence presented shows that the crime was not actually committed or is insufficient to prove his guilt beyond reasonable doubt. Thus, if on the basis of the stipulations made at the pre-trial conference it was established that the accused did not commit the crime charged, a motion to dismiss may be filed and granted, as in this case.

This explanation deserves scant consideration.

Admittedly, there is no material difference between the Motion to Dismiss filed by Ordiz before the RTC and a demurrer to evidence.

Section 23, Rule 119 of the Revised Rules of Criminal Procedure sets out the procedure for demurrer to evidence:

Section 23. *Demurrer to evidence.* - After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the