

SECOND DIVISION

[A.M. NO. MTJ-05-1581 (FORMERLY OCA-IPI NO. 04-1547-MTJ), February 28, 2005]

PETER L. SESBREÑO, COMPLAINANT, VS. JUDGE GLORIA B. AGLUGUB, METROPOLITAN TRIAL COURT, BRANCH 2, SAN PEDRO, LAGUNA, RESPONDENT.

R E S O L U T I O N

TINGA, J.:

Peter L. Sesbreño filed a *Verified Complaint*^[1] dated March 2, 2004 against respondent judge, Hon. Gloria B. Aglugub, charging the latter with Gross Ignorance of the Law, Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service relative to Criminal Case No. 39806 entitled *People v. Enrique Marcelino, et al.*

It appears that complainant filed three (3) separate complaints against Enrique Marcelino (Marcelino), Susan Nuñez (Nuñez), Edna Tabazon (Tabazon) and Fely Carunungan (Carunungan), all from the Traffic Management Unit of San Pedro, Laguna, for Falsification, Grave Threats and Usurpation of Authority. The three (3) cases were assigned to respondent judge's branch and subsequently consolidated for disposition.

After conducting a preliminary examination, respondent issued a *Consolidated Resolution*^[2] dated May 6, 2003, dismissing the cases for Falsification and Grave Threats for lack of probable cause, and setting for arraignment the case for Usurpation of Authority. Except for Marcelino who failed to appear during the arraignment, all of the accused were arraigned. Respondent judge issued a warrant for Marcelino's arrest.

Subsequently, complainant filed a *Private Complainants' Urgent Manifestation*^[3] dated February 6, 2004 alleging that the accused were also charged with violation of Republic Act No. 10^[4] (R.A. 10) and praying that warrants of arrest be likewise issued against all of the accused.

Acting upon this manifestation, respondent judge issued an *Order*^[5] dated February 12, 2004 stating that a charge for violation of R.A. 10 was indeed alleged in the complaint for Usurpation of Authority but was not resolved due to oversight. However, since the statute only applies to members of seditious organizations engaged in subversive activities pursuant to *People v. Lidres*,^[6] and considering that the complaint failed to allege this element, respondent judge found no probable cause and dismissed the charge for violation of R.A. 10. Further, citing Sec. 6(b), Rule 112 of the Revised Rules of Criminal Procedure (Rules), respondent judge denied complainant's prayer for the issuance of warrants of arrest against the

accused and ordered the records forwarded to the Provincial Prosecutor's Office (PPO) for review.

Thereafter, complainant's counsel, Atty. Raul Sesbreño (Atty. Sesbreño), filed a *Motion for Reconsideration and Urgent Ex-Parte Motion for Issuance of Warrant of Arrest Against Non-Appearing Accused*. Respondent judge, however, did not act on these motions allegedly because the court had already lost jurisdiction over the case by then.

The PPO affirmed respondent's order and remanded the case to the court for further proceedings on the charge of Usurpation of Authority.

During the hearing of the case on February 14, 2004, Tabazon, Carunungan and Nuñez did not appear. Atty. Sesbreño, however, did not move for the issuance of warrants of arrest against them. Neither did he object to the cancellation of the scheduled hearing.

The foregoing circumstances brought about the filing of the instant administrative complaint.

Complainant contends that respondent judge violated Sec. 6(b), Rule 112 of the Rules when she refused to issue warrants of arrest against the accused. Complainant also faults respondent judge for allegedly *motu proprio* reconsidering her *Consolidated Resolution* dated May 6, 2003 and failing to order its transmittal to the Office of the Ombudsman within ten (10) days.

In her *Comment With Motion To Dismiss The Administrative Complaint*^[7] dated March 26, 2004, respondent judge counters that the issuance of a warrant of arrest is discretionary upon the judge. Since she found no indication that the accused would abscond, she found it unnecessary to issue the warrant. Moreover, under Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, the PPO has been designated as the Deputized Ombudsman Prosecutor. The PPO can take action on similar cases for review and appropriate action. Thus, she acted in accordance with law when she forwarded the records of the case to the PPO for review and not to the Office of the Ombudsman as complainant insists.

Respondent judge further accuses complainant and Atty. Sesbreño of falsification, and the latter of violation of Rule 1.01 and Rule 10.01 of the Code of Professional Responsibility. Allegedly, the affidavit which was attached to the instant verified complaint was not notarized by Atty. Raul Corro as indicated therein. Further, Atty. Sesbreño was allegedly convicted of Homicide and may have been suspended from the practice of law.

Complainant reiterates his allegations in his *Complainant's Reply To Respondent's Comment Dated March 26, 2004*^[8] dated May 11, 2004. He further contends that there is no provision in the Ombudsman Act of 1989 specifically deputizing the PPO to be the "Deputized Ombudsman Prosecutor" as respondent judge contends. He adds that respondent judge failed to comply with Administrative Order No. 8 since she has yet to forward her resolution to the Deputy Ombudsman.

Moreover, complainant points out that the affidavit attached to his complaint was

notarized by Atty. Corro as certified by a member of the latter's staff. Complainant also disproves respondent judge's allegation that Atty. Sesbreño is in the habit of filing administrative complaints against judges, explaining that the latter merely acted as counsel for litigants who filed administrative complaints against certain judges.

In another *Verified Complaint*^[9] filed on March 18, 2004, complainant further charges respondent with violating Sec. 9(b), Rule 112 of the Rules.

Respondent Judge filed a *Comment With Motion To Dismiss Administrative Complaint*^[10] dated May 7, 2004 clarifying that contrary to complainant's allegation, she did not conduct a preliminary investigation in the case for Usurpation of Authority. What was submitted for preliminary investigation was the charge for violation of R.A. 10. It was her resolution dismissing the charge for violation of R.A. 10 which was transmitted to the PPO for appropriate action. However, since the charges for violation of R.A. 10 and Usurpation of Authority were contained in a single complaint, respondent judge deemed it proper to forward the entire records to the PPO.

Complainant filed a *Complainant's Reply To Respondent's Comment Dated May 7, 2004*^[11] dated May 20, 2004 substantially reiterating his allegations.

The *Verified Complaint* filed on March 18, 2004 was treated as a supplemental complaint per the notation in the *Memorandum*^[12] dated June 25, 2004.

In sum, complainant asserts that respondent judge erred in conducting a preliminary investigation for the charge of Usurpation of Authority; in not issuing warrants of arrest for failure of the accused to appear during trial; in issuing her *Order* dated February 12, 2004 dismissing the complaint for violation of R.A. 10; and in transmitting the records of the case to the PPO instead of the Office of the Ombudsman.

The Office of the Court Administrator recommends that the instant complaint be dismissed for lack of merit but that respondent judge should be reminded to be more circumspect in the performance of her duties.^[13] It made the following findings:

A careful consideration of the records as well as the pertinent rules reveals that there is nothing in the Rules of Criminal Procedure which requires a judge to issue a warrant of arrest for the non-appearance of the accused during the trial. Hence, its issuance rests on the sound discretion of the presiding judge. More so in this case, the private prosecutor did not move for the issuance of such warrant.

As regards the next issue, Rep. Act No. 10 penalizes a person who, with or without pretense of official position, shall perform any act pertaining to the Government, or to any person in authority or public officer, without being lawfully entitled to do so, shall be punished with imprisonment of not less than two (2) years nor more than ten (10) years. Violation thereof is cognizable by the Regional Trial Court but subject to preliminary investigation.

Respondent judge admitted that she overlooked the charge when she conducted the preliminary examination of the complaints. Nonetheless, after reviewing the case, respondent Judge found no probable cause and ordered the dismissal of the case. Therefore, when respondent Judge motu proprio ordered the dismissal of the case for lack of probable cause, she was acting in accordance with the procedure on preliminary investigation laid down in Sec. 3, Rule 112 of the Rules on Criminal Procedure.

Respondent Judge also directed that the records of the case be forwarded to the Provincial Prosecutor's Office on review. Sec. 5 of Rule 112 provides that the resolution of the Investigating Judge is subject to review by the provincial or city prosecutor, or the Ombudsman or his deputy, as the case may be.

It is respondent Judge's contention that the resolution shall be reviewed by the Provincial Prosecutor. She explained that pursuant to the Ombudsman Act of 1989, the Provincial Prosecutor has jurisdiction to take cognizance of the charge of Violation of R.A. No. 10.

However, Sec. 31 of Rep. Act No. 6770 or "The Ombudsman Act of 1989" provides that prosecutors can (be) deputized by the Ombudsman to act as special investigator or prosecutor only on certain cases. Such provision is not applicable to the issue at hand. Therefore, respondent Judge erred when she forwarded the case for review to the Provincial Prosecutor's Office. Nonetheless, complainant failed to show that respondent Judge was motivated by bad faith when she issued the assailed order. At most, she is guilty of judicial error for which she could not be held administratively accountable absent any proof of fraud or other evil motive.^[14]

A preliminary investigation is required 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 one (1) day without regard to the fine.^[15] Thus, a preliminary investigation is not required nor was one conducted for the charge of violation of Art. 177 of the Revised Penal Code which is punishable by prision correccional in its minimum and medium periods or from six (6) months and one (1) day to four (4) years and two (2) months.^[16]

This being so, Sec. 9, Rule 112 of the Rules is applicable. Said section provides:

Sec. 9. Cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure.—

*(b) If filed with the Municipal Trial Court.—*If the complaint or information is filed with the Municipal Trial Court or Municipal Circuit Trial Court for an offense covered by this section, the procedure in section 3(a) of this Rule shall be observed. If within ten (10) days after the filing of the complaint or information, the judge finds no probable cause after personally evaluating the evidence, or after personally examining in writing and under oath the complainant and his witnesses in the form of searching