

EN BANC

[A.M. NO. RTJ-05-1916 (FORMERLY OCA I.P.I NO. 03-1707-RTJ), May 10, 2005]

**MELENCIO P. MANANSALA III, COMPLAINANT, VS. JUDGE
FATIMA G. ASDALA, REGIONAL TRIAL COURT (RTC), BR. 87,
QUEZON CITY, RESPONDENT.**

D E C I S I O N

CARPIO-MORALES, J.:

The following incidents spawned the filing of the present administrative case.

Before noon of February 1, 2003, Winfried Herbst, a German national, was detained at Police Station 10 in Kamuning, Quezon City for breaking a glass wall in the office of Melencio P. Manansala III (complainant) at PM Building at 24 Matalino St., Diliman, Quezon City. By complainant's account, in late afternoon of even date, Judge Fatima G. Asdala (respondent) of the Regional Trial Court of Quezon City, Branch 87, called up by telephone the Station Commander of Station 10 Police Superintendent Atty. Joel Napoleon Coronel, requesting for the release of Herbst to her custody. Atty. Coronel, however, did not accede to respondent's request, he informing her that complainant was adamant in filing criminal charges against Herbst and they were just waiting for the arrival of the inquest fiscal.

Complainant further relates that on February 3, 2003, Mark Cabigao, the sheriff assigned at respondent's sala, together with two policemen, went to PM Building and requested that the Mercedes Benz car of Herbst which he parked within the vicinity be turned over to their custody.

On February 4, 2003, complainant, together with retired Quezon City Regional Trial Court Judge Marcelino Bautista appeared at the "Direct Connect," a television show of Atty. Batas Mauricio, wherein complainant aired respondent's alleged meddling in the case against Herbst. In the same show, respondent's side was, through telephone, likewise aired.

The following day or on February 5, 2003, respondent filed before the Quezon City Prosecutor's Office a complaint for libel against complainant and Judge Bautista for allegedly defaming her in the television show of Atty. Mauricio.

Subsequently, on February 13, 2003, complainant filed a complaint-affidavit, with a supplemental complaint-affidavit, against respondent before the Office of the Ombudsman charging her with violation of Section 3(a) of Republic Act 3019 (Anti-Graft and Corrupt Practices Act) for allegedly

Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of

the latter or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

By Memorandum^[1] of February 17, 2003, the Ombudsman considered the case against respondent closed and terminated without prejudice and referred it to the Office of the Court Administrator (OCA) for appropriate action.

Upon receipt by the OCA of complainant's complaint-affidavit and supplemental complaint-affidavit on March 13, 2003, it directed respondent, by Indorsement^[2] dated April 9, 2003, to submit her comment thereon.

In her comment^[3] dated May 16, 2003, respondent claimed that the complaint at bar was intended to harass her – for the purpose of getting back at her, she having charged complainant and his lawyer Marcelino Bautista, Jr. with libel. Respondent's version of what transpired on February 1 and 3, 2003 is quoted *verbatim*:

On February 1, 2003, a Saturday, at about 6:30 in the evening, as I was on my way out to treat my children to a weekend dinner, I received an overseas call from Ed Berzosa, a first cousin working [in] Hilton Macau asking for advi[c]e in regard [to] his benefactor, who before noon of that day, was allegedly taken to the Kamuning Police Station for some offense. Since Ed could not accurately provide me the information I desired to know to be able to give the proper legal advice, I instructed Ed instead to get in touch with his benefactor Winfried Herbst and advise the latter to call me. At about 7 o'clock, my phone rang. It was Herbst on the line, saying that he was arrested upon the complaint of Manansala after he broke some glass in the latter's office on provocation; that he did so because he was fed up with Manansala's refusal and delay in paying what he (Manansala) owes him, that he was detained at the Kamuning Police Station at about 11:00 in the morning and that his complainant, who seems to be very popular with the police officers thereat, would call every now and then, oftentimes, leaving threatening words, through his cohorts at the station, for Herbst.

I could sense Herbst's agitation mainly due to the fact that he claims he has not been unable to reach his lawyer since he was detained, neither was his side of the incident taken down by the police.

When Herbst asked if he could already be released, that was the time I decided to give the needed advice and information, such as: that if there has been a formal complaint, for sure, he will be brought to inquest, and that since it is Saturday, an inquest prosecutor is on duty and so, I then asked Herbst to find out from the investigator when inquest will take place. As Herbst had a sideline conversation with someone, I heard someone in the background ask Herbst who he was in conversation with. Before I knew it, someone other tha[n] Herbst was on the line and he introduced himself as some police officer whose name I cannot recall and asked what is it I wanted to know and who I am. I introduced myself as Mrs. Asdala, a friend of Herbst and inquired if there has been a complaint filed against Herbst, for what crime and when the case will be inquested. I gathered then that Herbst was charged with malicious mischief for a damaged glass wall costing more or less

P30,000.00, that inquest will take place at about 9 o'clock in the evening.

Having been so informed, I asked to speak with Herbst again whence I advised Herbst that in an inquest investigation, whatever he will say will be immaterial, as the inquest fiscal will focus only on what the complaint says; he has to wait for the resolution of the fiscal whose recommendation will be for further investigation, if he finds the complaint and evidence insufficient, in which case he will have the opportunity to submit his counter-affidavit or the fiscal may recommend filing of the case. Either way, the recommendation will wait for the approval of the Chief City Prosecutor or his assistant before he can be released without necessity of bail if for further investigation; with bail, if filed. Often the inquest fiscal's recommendation stays for minor offenses like malicious mischief, UNLESS, some interested souls INTERVENE for a reversal. I also advised Herbst of what demeanor to take during the inquest to avoid getting the ire of the inquest investigator, then hanged up but advising to keep me posted by text of the development, but suggested to offer [to] pay the damage caused at once, to soothe his complainant.

At about 10 o'clock in the evening, Herbst sent [a] message that the inquest prosecutor's recommendation is for further investigation. I texted back saying that it is good news as he then will have the opportunity to present his side before a final resolution is made.

x x x

On February 3, 200^[3], at about 4:30 in the afternoon, I had an incidental conversation with Atty. Bautista on the cell phone and asked why he would not want Herbst's Mercedes Benz removed from where it was parked along Malakas Street. As related to me by Herbst, he left his Mercedes Benz unattended on the road fronting PM apartments where Manansala's office is located when he was forcibly hauled by the police summoned by Manansala in the morning of February 1, 2003. Herbst called to inform that a friend reported seeing the tires of his car all flat and that the security guards of Manansala's office were responsible for that. Fearing more vandalism, he asked for help to move out his car.

Working hours over, I **asked my sheriff to check if he can do anything. My sheriff was all too willing to help that he immediately proceeded to where the car could be found only to be met by an irate Manansala and his bosom lawyer Marcelino Bautista,** who berated him in front of several people and called him "pakialamero" at the same time telling him that no one can get Herbst car but Herbst personally . . . which was precisely what Herbst was avoiding because Manansala's men almost roughed him up before the police came on February 1, 2003, when the incident leading to the filing of the case, occurred. It appears that upon seeing my sheriff in office uniform, Atty. Bautista asked what court he is assigned. My sheriff then called up to inform what transpired and that was when I asked to speak with Mr. Bautista ONLY for the purpose of asking him as to why he would not allow the car to be pulled out, after all, it has nothing to do with the case filed against Herbst by Manansala. As earlier said, my only purpose in

talking with Atty. Bautista on the phone was to ask for his reason in not allowing Herbst car moved out, knowing that the car was not even entrusted to him or to Manansala, thus, they do not have any right to withhold it from anyone in Herbst behalf. It was never to ask for the release of the car, precisely for the reasons already stated, and which I emphasized in my conversation with Atty. Bautista that afternoon of February 3, 2003 when, Manansala arrogantly asked why the effort on my part. I told him Herbst is a family friend, my cousin's benefactor and he asked for help with his car. However, when Bautista, construed the effort as meddling, I thought any further conversation with him on the phone would not help especially when he made it clear that they will not allow anyone to get the car from where it was, so I told myself just to forget about it. When Herbst texted that he has been released from detention after posting bail, I instead, advised him to get his car personally but reminding him to avoid any untoward confrontation with Manansala or his men or Bautista.

x x x^[4] (Emphasis and underscoring supplied)

By Resolution^[5] dated February 16, 2004, this Court referred the complaint to Court of Appeals Justice Renato C. Dacudao for investigation, report and recommendation.

In the investigation conducted by Justice Dacudao, complainant presented three witnesses, namely, Atty. Coronel, Sheriff Mark Cabigao, and Judge Bautista, the gists of whose testimonies follow after their names.

ATTY. CORONEL testified as follows:

On February 1, 2003, the duty desk officer, Police Chief Inspector Danilo Maceren, received a telephone call informing him that one who introduced herself as Judge Asdala wanted to talk to him (Atty. Coronel) by phone. He thus talked to the caller who requested him to, if possible, release Herbst from detention and turn him to her custody, and asked about the possibility of the case being settled between complainant and Herbst.^[6]

Wanting to accommodate respondent's request, he summoned complainant to his office and echoed to him respondent's request.^[7]

Sheriff **MARCELINO CABIGAO** testified as follows:

On February 3, 2003, after office hours, "napagutusan lang po ako na pumunta sa Station 10 and ask for police assistance and go to PM Apartments to remove a vehicle because it might be damaged or lost."^[8]

Upon arrival at the site where the vehicle was parked, he found out that all its 4 tires were already deflated. And when he asked complainant and Judge Bautista for permission to get the vehicle, they refused, prompting him to call respondent and inform her that "they don't want to give it and even if they did, I cannot take it because it has already 4 flat tires." Respondent then asked him who prevented him from retrieving the vehicle, upon which he named Judge Bautista and complainant. Respondent further asked him to give his phone to Judge Bautista which he did, and

after respondent talked to Judge Bautista, she told him (Cabigao) to leave the place if they do not want to release the vehicle.^[9]

JUDGE BAUTISTA declared that during his phone conversation with respondent in the afternoon of February 3, 2003, he told her to get an authorization from Herbst in order to retrieve the car as well as make an inventory of the contents of the vehicle to avoid any misunderstanding later.^[10]

Upon the other hand, **RESPONDENT**, at the witness stand, repeated her claim that the administrative complaint was filed on account of her filing of the libel charges against complainant and Judge Bautista.^[11] And she reiterated the contents of her comment to the complaint, she reasserting that there was no interference on her part with regard to the investigation of Herbst took place.^[12]

INVESTIGATING JUSTICE DACUDAO, by his Report and Recommendation,^[13] found respondent answerable for palpable abuse of authority or plain misconduct. The pertinent portion of his report reads:

x x x [T]his Investigator believes that respondent judge could be held liable under Section 3(a) of Anti-Graft and Corrupt Practices Act, to wit:

x x x

Respondent judge can be faulted for having called up that early evening of February 1, 2003, Atty. Joel Napoleon Coronel, station commander of the Kamuning Police Station No. 10, to request for the release to her custody of the German national Winfried Herbst, who was scheduled to undergo inquest investigation at the Office of the City Prosecutor of Quezon City, for malicious mischief (or vandalism), which the latter apparently committed, after he had allegedly smashed the window glass at the PM Building at 24 Matalino Street, Diliman, Quezon City, where the complainant Melencio P. Manansala III was living or holding office; as well as in asking for the compounding or amicable settlement of the malicious mischief (or vandalism) case against the German national. For, it can hardly be doubted that in making both requests respondent judge, one way or another, wittingly or unwittingly, subtly or blatantly, brought to bear, or **sought to bring to bear, upon the precinct commander, the influence of her office as a judge, in an irregular and improper manner.** Rightly or wrongly, the public identifies the abstract precept of justice, and the administration of justice, with the persona and actuations of the visible human judge that they see, and with whom they come in contact, or deal with. Respondent judge's plea of good faith thus becomes tenuous when it is remembered that as a former fiscal or prosecutor, respondent judge ought to know that there is no legal or statutory warrant or basis, at that time, for her requests/ actions in seeking to obtain (temporary) custody of the still-[to] be-inquested Winfried Herbst, or for the compounding or amicable settlement of the malicious mischief (or vandalism) case, against the latter. However one looks at it, **either course of action amounted to an unjustified, if not unlawful, interference or meddling,** ("or persuading, inducing or influencing another public officer" to borrow the language of the statute)