

## SECOND DIVISION

[ A.M. NO. MTJ-05-1599, October 14, 2005 ]

**MARIBETH M. ORA, COMPLAINANT, VS. JUDGE ROMEO A. ALMAJAR, MUNICIPAL CIRCUIT TRIAL COURT, SALAY, MISAMIS ORIENTAL, RESPONDENT.**

### D E C I S I O N

**PUNO, J.:**

This is an administrative case for Gross Ignorance of the Law filed by Maribeth M. Ora against Judge Romeo A. Almajar, Municipal Circuit Trial Court (MCTC) of Salay, Misamis Oriental.

Complainant alleged<sup>[1]</sup> that on June 26, 2003, a criminal complaint for *estafa* was filed against her by the Chief of Police of Binuangan, Misamis Oriental, before the MCTC of Salay and Binuangan,<sup>[2]</sup> presided by respondent Judge Romeo A. Almajar. She allegedly borrowed ten thousand pesos (P10,000.00) with fifteen percent (15%) interest and payable within four (4) months from Mrs. Remedios Madelo, and had not paid the debt despite the lapse of four years. Notwithstanding the civil nature of the offense, respondent judge issued a warrant for her arrest on July 16, 2003. Hence, this administrative case for gross ignorance of the law.

In his comment,<sup>[3]</sup> respondent insisted that he merely followed the **Rules of Court** when he issued the warrant of arrest against complainant. When Crim. Case No. 2003-37 was filed on June 30, 2003, he issued an Order<sup>[4]</sup> setting the preliminary investigation of the case on July 16, 2003. Complainant failed to appear. On the basis of the report that complainant has no permanent address and cannot be subpoenaed, he issued a warrant for her arrest pursuant to Section 6 (b), Rule 112 of the Revised Rules of Criminal Procedure<sup>[5]</sup> in relation to Sec. 5 (e), Rule 135 of the Rules of Court,<sup>[6]</sup> in order not to frustrate the ends of justice. While he had the initial impression that the case against complainant is civil in nature, he did not immediately dismiss the case as he had to base his resolution on the testimonies of both parties to the case. Respondent judge charged that the complaint against him was malicious and baseless.

After evaluation, the Office of the Court Administrator (OCA) recommended that respondent be held liable for gross ignorance of the law as charged, and fined two thousand pesos (P2,000.00).

Section 3, Rule 112 of the **Revised Rules of Criminal Procedure**<sup>[7]</sup> outlines the procedure for the conduct of a preliminary investigation, *viz*:

(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. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(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.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(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 if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer 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.

With respect to issuances of warrants of arrest, Sec. 6 (b) of the same rule provides:

SEC. 6. *When warrant of arrest may issue.*- x x x x (b) *By the Municipal Trial Court.*- x x x x When the investigation is conducted by the judge himself, he shall follow the procedure provided in section 3 of this Rule. If his findings and recommendations are affirmed by the provincial or city prosecutor, or by the Ombudsman or his deputy, and the corresponding information is filed, he shall issue a warrant of arrest. However, without waiting for the conclusion of the investigation, the judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

Although judges of first level courts are now no longer authorized to conduct preliminary investigations,<sup>[8]</sup> respondent judge nevertheless betrayed unfamiliarity with the aforementioned rules at the time that he was expected to apply them.

*First*, he issued a warrant of arrest against herein complainant upon her mere non-appearance during the first date scheduled for the preliminary investigation of the case. What respondent judge should have done was to follow Sec. 3 (d) which clearly authorizes him to resolve the complaint instead based on the evidence presented by the complainant alone. Respondent judge cannot coerce herein complainant into attending the preliminary investigation. An accused can waive his right to be present thereat, and cannot be compelled to attend the same.<sup>[9]</sup> Certainly, a warrant of arrest may not be issued simply to secure his presence.

*Second*, respondent judge disregarded Sec. 6 (b) which provides that a warrant of arrest may be issued only after examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers. Three (3) conditions must concur before a warrant of arrest may be issued, viz: (1) the investigating judge must have examined in writing and under oath the complainant and his witnesses by searching questions and answers; (2) he must be satisfied that probable cause exists; and (3) there is an immediate necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.<sup>[10]</sup> This rule is based on no less than Sec. 2, Art. III of the **1987 Constitution** which provides: