

SECOND DIVISION

[A.M. No. MTJ-04-1528. (Formerly A.M. OCA IPI No. 99-648-MTJ), February 06, 2004]

INOCENCIO M. MONTES, COMPLAINANT, VS. JUDGE EFREN B. MALLARE, MUNICIPAL TRIAL COURT, STO. DOMINGO, NUEVA ECIJA, RESPONDENT.

RESOLUTION

CALLEJO, SR., J.:

The instant administrative complaint arose when Inocencio M. Montes filed an Affidavit-Complaint dated January 2, 1999 charging Judge Efren B. Mallare of the Municipal Trial Court of Sto. Domingo, Nueva Ecija, with gross ignorance of the law and violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) relative to Criminal Case No. 4052 entitled *People of the Philippines v. Inocencio M. Montes*, for estafa.

The complainant is the accused in the said criminal case. The complainant alleged that during the preliminary investigation^[1] on November 17, 1998, the complainant (the accused therein) submitted his Counter- Affidavit^[2] and the respondent judge questioned him as follows:

Tanong, Nasaan ang baril ni Ginoong Manuel Navarro?
Sagot, Nasa bahay po.
Tanong, Magkano and balanse ni Ginoong Manuel Navarro?
Sagot, Five Thousand Seven Hundred pesos po, (P5,700.00)
Tanong, Kung tutubusin ni Ginoong Manuel Navarro ang nasabing baril,
at babayaran ka sa balanse niya?
Sagot, Opo.^[3]

Thereafter, the respondent submitted the case for resolution.^[4] According to the complainant, he was able to speak to Manuel Navarro, the complainant in the criminal case, and to SPO1 Gregorio Laugo.^[5] He was told that the only reason why a criminal complaint was filed against him was that they wanted him to desist from continuing to prosecute SPO1 Laugo in Criminal Case No. 98-3119^[6] for robbery with force upon things then pending before the Municipal Circuit Trial Court of Sto. Tomas, Pampanga.

The complainant further alleged that the respondent was paid cash to facilitate the issuance of the warrant of arrest against him, and that a careful study of the case would reveal that it was baseless. The complainant concluded that the respondent judge conspired with Manuel Navarro and SPO1 Laugo in having him arrested and jailed.

In his Comment,^[7] the respondent denied the foregoing allegations. He admitted that he rendered a Resolution^[8] on November 24, 1998, finding probable cause for estafa against the accused (the complainant) pursuant to par. (b), Section 6, Rule 112 of the 1985 Rules of Criminal Procedure, as amended, and issued a warrant for the latter's arrest. He then ordered the entire records of the case to be forwarded to the Office of the Provincial Prosecutor of Nueva Ecija for appropriate action.^[9] He countered that the Office of the Provincial Prosecutor affirmed his findings thereon and filed the corresponding Information^[10] dated December 18, 1998 for estafa against the complainant. The case is now pending before the Regional Trial Court of Talavera, Nueva Ecija, Branch 88.

According to the respondent, the complainant was clearly motivated by ill will and hatred and only instituted the present administrative complaint as an act of vengeance. Attached to the respondent's comment were the Affidavits of Manuel G. Navarro^[11] and SPO1 Laugo^[12] denying the complainant's allegation that they conspired with one another, along with the respondent judge, in having the complainant arrested and charged with estafa.

In his Reply, the complainant reiterated that on November 13, 1998, he submitted his Counter-Affidavit and filed his Motion for Postponement of Hearing. He alleged that the respondent judge, upon receipt of his motion, remarked, "*Hindi puede yan kailangan darating ka, inistafa mo ang baril ni Ginoong Manuel Navarro.*" The complainant concluded that the respondent judge and Navarro were in cahoots with one another. He also averred that on November 17, 1998, he caught Manuel Navarro, SPO1 Greg Laugo and the respondent judge discussing Criminal Case No. 98-3119, the case against SPO1 Laugo. Preliminary investigation then ensued, where the respondent judge did not ascertain if the complainant was represented by counsel, nor even ask the latter to secure one for the case.

The complainant also alleged that he did not receive a copy of the respondent's November 4, 1998 Resolution. On the scheduled date of hearing of Criminal Case No. 98-3119, SPO1 Laugo approached him and requested that he withdraw the said complaint. The complainant retorted, "*Magaling kayo nakulong ako kaagad sa kasong isinampa ninyo sa akin,*" to which SPO1 Laugo replied, "*Galante si Ginoong Manuel Navarro, nagbigay lang ng pera sa judge 'yon kaya may warrant of arrest ka na.*" This statement was allegedly heard by people who were within the area at the time, some of whom were willing to testify.

In a Letter dated August 2, 1999, the respondent informed the Court of the fact that the Office of the Ombudsman dismissed a criminal complaint filed by the same complainant against him involving the same cause of action as the instant case.

The case was then referred to Executive Judge Cholita B. Santos of the RTC of Sto. Domingo, Nueva Ecija for investigation, report and recommendation. The Executive Judge scheduled a hearing of the case on August 24, 2000.^[13] However, the notice of the hearing addressed to the complainant was returned unserved. According to Sheriff Emmanuel S. Velasco, he was informed that the complainant had already sold his house to another, and that he was residing somewhere in Manila with no forwarding address.^[14] The hearing of the case was re-set to August 31, 2000, but the notice thereof was likewise returned unserved.^[15] The Executive Judge issued

another Order^[16] re-setting the case for hearing for the last time on September 21, 2000. The complainant once again failed to appear as the notice of hearing addressed to him was likewise returned unserved. The respondent manifested that the case against him be recommended dismissed.

In her Report dated October 18, 2000, Executive Judge Santos recommended that as the complainant presented no evidence at all to substantiate the charges against the respondent, the instant complaint should be dismissed for lack of evidence. According to the Executive Judge, this is in consonance with the rule that "an affidavit is hearsay unless the affiant is presented on the witness stand."^[17]

The Office of the Court Administrator thereafter received a Letter^[18] dated September 12, 2000 from the complainant, requesting that Executive Judge Santos be discharged as the investigating officer. The complainant revealed that he likewise instituted a complaint against the Executive Judge docketed as A.M. OCA IPI No. 99-697-RTJ, which was, however, dismissed on November 17, 1999. He averred that it would be a disadvantage for him if Executive Judge Santos would continue to handle the case, and further requested that the investigation be transferred to Manila. He also stated that the criminal case for estafa filed against him was pending before the *sala* of the Investigating Judge and that he filed a Motion for Transfer of Venue. Until now, his motion remained unresolved. He also informed the Court of his new mailing address.

In a Memorandum dated April 16, 2001, Deputy Court Administrator Jose P. Perez opined that a judge cannot be made to inhibit himself from hearing a case simply because a party or his counsel has instituted administrative charges against a judge and thereafter claims the existence of a "state of hostility" between him and the latter. Thus, according to the OCA the ground cited by the complainant did not constitute sufficient reason for the Executive Judge to cease and desist from investigating the administrative complaint. It thereafter made the following recommendations:

IN VIEW OF THE FOREGOING, we respectfully submit for the consideration of the Honorable Court recommending that:

1. The letter dated September 12, 2000 of the complainant requesting Executive Judge Santos to inhibit herself from investigating the case be **DENIED**; and
2. Executive Judge Cholita Santos be INFORMED of the new address of the complainant; and
3. This case be **REFERRED BACK** to Executive Judge Cholita Santos for investigation, report and recommendation.^[19]

The Court adopted the foregoing in its Resolution^[20] dated June 27, 2001. The Court ordered the Executive Judge to submit her report within ninety (90) days from receipt of notice.

In a Letter dated September 10, 2001, the complainant once again prayed for the transfer of the case from Nueva Ecija to Manila. He also reiterated his request for