

SECOND DIVISION

[A.M. No. MTJ-02-1391, June 07, 2004]

RODOLFO RAMA RIÑO, COMPLAINANT, VS. JUDGE ALFONSO R. CAWALING, MUNICIPAL CIRCUIT TRIAL COURT, CAJIDIOCAN, ROMBLON, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

The instant administrative complaint arose when Rodolfo Rama Riño, in a verified Letter-Complaint dated September 5, 2000, charged Judge Alfonso R. Cawaling of the Municipal Circuit Trial Court, Cajidiocan, Romblon, with bias and partiality, abuse of authority and gross ignorance of the law relative to Criminal Case No. 4511 entitled "*People of the Philippines v. Rodolfo Rama Riño*," for grave threats.^[1]

The complainant alleged that he was the accused in the said case, and that the respondent judge conducted a preliminary investigation^[2] on October 27, 1999 without due notice to him. According to the complainant, the respondent, prematurely and with undue haste, issued a warrant^[3] for his arrest on October 28, 1999, considering that there was no necessity in placing him (the complainant) in police custody.

In his comment,^[4] the respondent alleged that contrary to the allegations of the complainant, the *subpoena* was served on him at his given address and that of his witnesses, pursuant to Section 3, Rule 112 of the Revised Rules of Criminal Procedure. Thereafter, he submitted his counter-affidavit, and the case was set for preliminary investigation in the afternoon of October 27, 1999. After the preliminary investigation, a warrant for the arrest of the complainant was issued, and the latter forthwith posted his bail bond and was released. The respondent also narrated that on the scheduled arraignment of the complainant on August 16, 2000, the complainant was present and was assisted by counsel, Atty. Cecilio R. Dianco, who moved for the deferment of the arraignment and pre-trial of the case, and asked for his inhibition on the ground that an administrative case had already been filed against the respondent before the Court. The respondent alleged that out of *delicadeza*, he inhibited himself, and that the order of inhibition was thereafter approved by Judge Placido C. Marquez.

The respondent also averred that Criminal Case No. 4511 was not covered by the Rules on Summary Procedure, the imposable penalty being higher than six months. As such, he had no alternative but to issue the warrant of arrest against the complainant.

In its Report^[5] dated November 14, 2001, the Court Administrator recommended that the instant administrative complaint be re-docketed as an administrative matter

and that the respondent judge be penalized to pay a fine of P10,000 for gross ignorance of the law, considering that the offense charged in Criminal Case No. 4511 is covered by the Rules on Summary Procedure.^[6]

The case was then referred to Judge Vedasto B. Marco, Executive Judge, Regional Trial Court, Romblon, for investigation, report and recommendation.^[7] In his Report and Recommendation dated January 15, 2004, the Executive Judge made the following findings:

From the foregoing, and the evidence submitted specifically the records of Criminal Case No. 4511, it appear (sic) that respondent judge did not violate the Rules of Procedure when he conducted the preliminary investigation of the case against Rodolfo Riño nor did he show biased (sic) and partiality against the latter. The complainant was afforded all the rights to preliminary investigation and the warrant was issued more than a year after it was in Court.^[8]

It was recommended that the respondent be absolved of any liability.

We do not agree.

Under the Revised Penal Code, grave threats is penalized with imprisonment of one (1) month and one (1) day to six (6) months (*arresto mayor*) and a fine not exceeding P500.00, if the threat is not subject to a condition.^[9] Thus, the subject criminal cases should have been tried under the Revised Rules on Summary Procedure, considering that such rules are applicable to criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six (6) months or a fine not exceeding P1,000.00 or both, irrespective of other imposable penalties, accessory or otherwise or of the civil liability arising therefrom.^[10] The respondent applied the regular procedure; he issued a warrant of arrest against the complainant after making a preliminary examination of the affidavit against the latter. Hence, the complainant was constrained to post bail, which was no longer necessary considering that the charge against him was simply grave threats.

Section 2 of the Revised Rules on Summary Procedure provides that "upon the filing of a civil or criminal action, the court shall issue an order declaring whether or not the case shall be governed by (the) Rule." The said provision further states that "patently erroneous determination to avoid the application of the (Rules on Summary Procedure) is a ground for disciplinary action." As we held in *Agunday v. Tresvalles*,^[11]

... (The) provision cannot be read as applicable only where the failure to apply the rule is deliberate or malicious. Otherwise, the policy of the law to provide for the expeditious and summary disposition of cases covered by it could be easily frustrated. Hence, requiring judges to make the determination of the applicability of the rule on summary procedure upon the filing of the case is the only guaranty that the policy of the law will be fully realized. ...^[12]

It is clear then that the respondent judge ought to be sanctioned for his failure to apply the proper procedure. A judge should be the epitome of competence, integrity