

## EN BANC

**[ A.M. No. MTJ-02-1462, August 09, 2004 ]**

**RANDALL-LYON GARCIA BUENO, COMPLAINANT, VS. JUDGE SAIDALI M. DIMANGADAP, MUNICIPAL CIRCUIT TRIAL COURT, MALABANG, LANA DEL SUR, RESPONDENT.**

### ***DECISION***

#### **PER CURIAM:**

Before us is an administrative complaint<sup>[1]</sup> dated February 21, 2002 against Judge Saidali M. Dimangadap, Acting Judge of the 4<sup>th</sup> Municipal Circuit Trial Court (MCTC), Malabang-Sultan Kumander-Kapatagan-Balabagan, Lanao del Sur, for gross ignorance of the law and grave abuse of discretion relative to the release of suspects in the thirteen criminal complaints filed for preliminary investigation.

In a sworn letter-complaint, P/Ins. Randall-Lyon Garcia Bueno, Chief of Police of Malabang, Lanao del Sur, charged respondent judge with grave abuse of discretion for the release of the apprehended suspects in thirteen criminal complaints he filed in court for preliminary investigation, to wit:

1. *People v. Sayam*, Criminal Case No. 2999-M for violation of R.A. No. 6425, where the accused was released after filing a cash bond of P3,500.00, however, no receipt was issued by the Clerk of Court.
2. *People v. Benito*, Criminal Case No. 2988 for violation of P.D. No. 1866, where the accused, who is a brother-in-law of respondent judge was released a day after the complaint was filed.
3. *People v. Benito, et al.*, Criminal Case No. 2989 for violation of R.A. No. 6425, which was dismissed without hearing a day after the complaint was filed.
4. *People v. Dima-ampao*, Criminal Case No. 2961 for violation of R.A. No. 6425, where the accused was released without bail and "for some consideration".
5. *People v. Paco, et al.*, Criminal Case No. 2959 for violation of R.A. No. 6425, where the accused were released "for the consideration of P24,000.00," without the knowledge of the Clerk of Court.
6. *People v. Pacaambung*, Criminal Case No. 2955 for violation of R.A. No. 6425, where the warrant of arrest was issued after four months from the filing of the complaint thereby giving the accused chance to be released from detention and to file counter-charge of frame-

up against the police.

7. *People v. Adam*, Criminal Case No. 2958 for Theft, dismissed on February 18, 2002 after the wife of the accused submitted an unsubscribed affidavit of desistance purportedly executed by the complainant, which bears a signature which was different from his signature.
8. *People v. Ansao, et al.*, Criminal Case No. 2951 for violation of R.A. No. 6425, all the accused were allowed to post a cash bond in the amount of P2,500.00 each, but no record exists of the payment.
9. *People v. Abedin*, Criminal Case No. 2931 for violation of P.D. 1866, the accused was released after posting a cash bond of P2,500.00.
10. *People v. Ampuan, et al.*, Criminal Case No. 2926 for violation of R.A. No. 6425, the accused were released after posting a cash bond of P3,000.00.
11. *People v. Adil, et al.*, Criminal Case No. 2921 for violation of R.A. No. 6425, where the accused were released after paying a cash bond of P5,000.00.
12. *People v. Diangka, et al.*, Criminal Case No. 2897 for violation of R.A. No. 6425, the accused were released after paying a cash bond of P3,000.00 each.
13. *People v. Diangka*, Criminal Case No. 2912 for violation of R.A. No. 6425, a second offense, where the accused was released from detention after being allowed to post a cash bond of P8,000.00.<sup>[2]</sup>

In his comment, respondent judge denied complainant's charges and claimed that they were false, fabricated and unfounded accusations which caused him mental anguish, besmirched reputation and sleepless nights.<sup>[3]</sup>

In a resolution<sup>[4]</sup> dated November 27, 2002, the complaint was referred to Executive Judge Valerio M. Salazar of the Regional Trial Court of Lanao del Norte, Branch 6, Iligan City for investigation, report and recommendation.

In his report to the Office of the Court Administrator (OCA) dated May 10, 2003, Judge Salazar found that thirteen cases were filed for preliminary investigation, of which eleven were dismissed on various grounds. However, the resolutions and records of the cases were not transmitted to the Office of the Provincial Prosecutor, as required under Rule 112 of the Revised Rules of Criminal Procedure. Further, the cash bonds approved by respondent judge were lower than those recommended in the Bail Bond Guide. Moreover, the records do not show that official receipts were issued for the said cash bonds. In the cases of *People v. Sayam*, *People v. Ansao, et al.* and *People v. Diangka*, respondent judge admitted that he personally received the cash bonds and that he issued personal receipts therefor. Judge Salazar recommended that respondent judge be reprimanded with a strong warning that a repetition of the same will merit the imposition of a more serious sanction.<sup>[5]</sup>

In its memorandum dated December 15, 2003, the OCA agrees with the findings of Judge Salazar that respondent judge should be held administratively liable; however, it recommends that respondent judge be dismissed from the service with forfeiture of all the benefits, except accrued leave credits, and with prejudice to re-employment in any branch, agency or instrumentality of the government including government-owned or controlled corporations.

Respondent judge failed to comply with Rule 112, Section 5 of the Revised Rules on Criminal Procedure, which specifies the duty of the investigating judge upon conclusion of the preliminary investigation.

SEC. 5. *Resolution of investigating judge and its review.* - Within ten (10) days after the preliminary investigation, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction, for appropriate action. The resolution shall state the findings of facts and the law supporting his action, together with the record of the case which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order for his release; (d) the transcripts of the proceedings during the preliminary investigation; and (e) the order of cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Within thirty (30) days from receipt of the records, the provincial or city prosecutor, or the Ombudsman or his deputy, as the case may be, shall review the resolution of the investigating judge on the existence of probable cause. Their ruling shall expressly and clearly state the facts and the law on which it is based and the parties shall be furnished with copies thereof. They shall order the release of an accused who is detained if no probable cause is found against him.

Respondent judge's failure to transmit the resolutions and records in eleven of the thirteen cases for preliminary investigation was a disregard of the clear mandate of the aforecited provision that it is mandatory for the investigating judge to transmit to the provincial or city prosecutor the resolution dismissing or admitting the complaint, together with the entire records of the case.

Respondent judge cannot feign ignorance of this mandatory duty, considering that he transmitted the resolutions and records in the cases of *People v. Ansao* and *People v. Dima-ampao* to the provincial prosecutor for review. Indubitably, the parties adversely affected by the dismissal of the complaints after preliminary investigation were denied the statutory right of review that should have been conducted by the provincial prosecutor.

Respondent judge's argument that the provincial prosecutor will dismiss the case anyway for lack of basis is untenable. Under Rule 112 of the Revised Rules on Criminal Procedure, it is the duty of respondent judge to conduct preliminary investigation and thereafter to transmit his findings to the Office of the Public Prosecutor for further action.