

## FIRST DIVISION

[ A.M. No. RTJ-03-1755, July 03, 2003 ]

**JUDGE SALVADOR P. DE GUZMAN (RET.), COMPLAINANT, VS.  
JUDGE AMALIA F. DY, REGIONAL TRIAL COURT, BRANCH 213,  
MANDALUYONG CITY, RESPONDENT.**

### R E S O L U T I O N

**YNARES-SANTIAGO, J.:**

Complainant Salvador P. De Guzman, Jr., a retired Regional Trial Court judge and now a practicing lawyer, filed a verified complaint<sup>[1]</sup> charging Judge Amalia F. Dy, Presiding Judge of the Regional Trial Court of Mandaluyong City, Branch 213, with Grave and Serious Misconduct and Conduct Prejudicial to the Best Interest of the Judiciary.

Complainant avers that his services were engaged by Lourdes L. Reyes for the purpose of filing a criminal complaint for Violation of *Batas Pambansa Blg. 22* against Emmanuel A. Cosico. Sometime in 1996, Cosico issued in favor of Reyes four checks which were dishonored for insufficiency of funds. The parties entered into an agreement whereby the South Rich Acres, Inc., Cosico's employer, shall redeem the dishonored checks from Reyes by conveying to her a parcel of land on condition that the title thereto was free from any encumbrances. In turn, Reyes promised to return the dishonored checks to Cosico. However, upon learning that the land was mortgaged, Reyes filed the criminal complaint against Cosico. The corresponding information was thereafter filed against Cosico with the Metropolitan Trial Court of Mandaluyong City, Branch 59, which was docketed as Criminal Case No. 81017.

In the meantime, Emmanuel Cosico filed with the Regional Trial Court of Parañaque City, an action for specific performance, which was docketed as Civil Case No. CV-00-0184, for the return of the four dishonored checks. His counsel and father, Atty. Manuel M. Cosico, filed with the Metropolitan Trial Court of Mandaluyong a motion to suspend the proceedings, on the ground of the pendency of a prejudicial question in Civil Case No. CV-00-0184. The Metropolitan Trial Court suspended the proceedings in Criminal Case No. 81017; however, on motion for reconsideration of complainant, it set aside its order of suspension and issued a warrant for the arrest of Cosico.

Cosico then filed a petition for certiorari with the Regional Trial Court of Mandaluyong City, presided by respondent judge, and docketed as Civil Case No. MC-00-1286. On November 10, 2000, respondent judge issued a Temporary Restraining Order enjoining the arraignment of Cosico which was scheduled on November 13, 2000. Thereafter, on February 9, 2001, respondent issued a writ of preliminary injunction to restrain the arraignment set on February 12, 2001.

Complainant filed a motion for reconsideration and argued that, under Rule 111,

Section 7 of the Revised Rules of Criminal Procedure, one of the elements of a prejudicial question is a previously instituted action involving an issue similar or intimately related to the issue raised in the subsequent criminal action. The motion was denied by respondent judge in an Order dated June 4, 2001.<sup>[2]</sup>

Hence, complainant filed an administrative complaint against respondent judge assailing her orders which are allegedly favorable to Atty. Cosico, who is her "*compadre*".

In her Comment,<sup>[3]</sup> respondent judge denied that Atty. Cosico was her *compadre* or that Atty. Cosico resorted to extra-legal means to obtain the orders dated November 10, 2000 and February 9, 2001. She maintained that the said orders were based on applicable substantive and remedial laws. The petition for certiorari was filed in her court during the effectivity of the 1985 Rules of Criminal Procedure, Rule 111, Section 5 of which does not require that the civil action be instituted ahead of the criminal action for a prejudicial question to arise. Thus, she ruled that Civil Case No. CV-00-0184 raised a prejudicial question which will affect the determination of the accused's criminal liability in Criminal Case No. 81017.

On November 27, 2002, the parties were required to manifest their willingness to have the case submitted for resolution on the basis of the pleadings<sup>[4]</sup> filed, which both complainant<sup>[5]</sup> and respondent<sup>[6]</sup> complied with.

After evaluation, the Court Administrator recommended that the instant complaint be dismissed for lack of merit on the ground that the errors raised in the complaint were judicial in nature, and that an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is readily available.<sup>[7]</sup>

We agree.

In administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint.<sup>[8]</sup> In the absence of contrary evidence as in this case, what will prevail is the presumption that the respondent has regularly performed his duties.<sup>[9]</sup> The Rules, even in an administrative case, demand that, if the respondent judge should be disciplined for grave misconduct or any graver offense, the evidence against him should be competent and should be derived from direct knowledge.<sup>[10]</sup> Before any member of the Judiciary can be faulted, there should be due investigation and presentation of competent evidence, especially since the charge is penal in character.<sup>[11]</sup>

The ground for the removal of a judicial officer should be established beyond reasonable doubt. Such is the rule where the charges on which the removal is sought is misconduct in office, willful neglect, corruption, or incompetence. The general rules in regard to admissibility of evidence in criminal trials apply.<sup>[12]</sup>

For liability to attach, the assailed order, decision or actuation of the judge in the performance of official duties must not only found to be erroneous but, most importantly, it must be established that he was moved by bad faith, dishonesty, hatred or some other like motive.<sup>[13]</sup> Similarly, a judge will be held administratively