SECOND DIVISION

[A.M. No. MTJ-00-1331 (formerly OCA IPI No. 99-779-MTJ), February 27, 2002]

MAYOR REYNOLAN T. SALES, COMPLAINANT, VS. JUDGE MELVYN U. CALVAN, MUNICIPAL CIRCUIT TRIAL COURT, BANGUI, ILOCOS NORTE, RESPONDENT.

D E C I S I O N

QUISUMBING, J.:

This is a complaint for gross violation of the Code of Judicial Conduct and of the Rules of Court, and for knowingly rendering an unjust judgment or order, filed by Reynolan T. Sales, then incumbent mayor of Pagudpud, Ilocos Norte, against Judge Melvyn U. Calvan, presiding judge of the Municipal Circuit Trial Court for Adams-Bangui-Dumalneg-Pagudpud, Ilocos Norte.

Complainant is the defendant in Criminal Case No. 9448-P[1] pending before the MCTC, Bangui, Ilocos Norte. Said case arose from a shooting incident that occurred on August 2, 1999 involving complainant and former Pagudpud mayor Rafael Benemerito, which resulted in the death of the latter. Complainant surrendered to police authorities and requested that he be brought to the PNP provincial headquarters in Laoag City.

A criminal complaint was filed against herein complainant, Mayor Sales, for purposes of preliminary investigation, before the MCTC in Bangui the following day, August 3, 1999. That same day, respondent judge conducted the preliminary investigation and issued an order finding probable cause for charging complainant with murder.[2] Respondent also issued a warrant for complainant's arrest on the same day.[3] No bail was recommended for his provisional release. Complainant was promptly arrested and detained at the provincial jail in Laoag City.

Respondent concluded his preliminary investigation without complainant having submitted his counter-affidavit and that of his witnesses. On August 5, 1999, respondent issued a resolution finding that "there exists a *prima facie* case against the accused."[4] On August 6, 1999, the records of the preliminary investigation were transmitted to the Office of the Provincial Prosecutor for review.

Complainant now alleges that respondent violated the Rules of Court, specifically Rule 137, Section 1 thereof, when he took cognizance of Criminal Case No. 9448-P for preliminary investigation. Complainant claims that respondent's wife, Susana Benemerito-Calvan, is the niece of the deceased, Rafael Benemerito, because her father, Julio Benemerito is the brother of the deceased. Respondent is a relative of the deceased within the third degree of affinity, and thus also of the deceased's wife, Thelma Benemerito, who is the complaining witness in the criminal complaint. Complainant argues that under the aforecited rule, respondent is disqualified from

taking cognizance of the murder case against him.

Complainant also points out that respondent violated the Code of Judicial Conduct, particularly Canon 2, Rule 2.03 and Canon 3, Rule 3.12, which provide as follows:

> Rule 2.03. – A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.
>
> x x x
>
> Rule 3.12.- A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:
>
> x x x
>
> (d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;
>
> x x x

Further, complainant claims that respondent denied him his right to due process by failing to follow the proper procedure concerning the conduct of preliminary investigation. Complainant wonders how respondent could have arrived at the conclusion that probable cause exists for charging him (complainant) with murder, on the same day that the criminal complaint was filed. Complainant also assails respondent's order for his arrest, since at that time complainant was already in the custody of the PNP at the Ilocos Norte provincial headquarters.

Moreover, complainant avers that respondent did not give him notice to file his counter-affidavit, in violation of Rule 112, Section 3 of the Rules of Court. Instead, respondent hastily terminated the preliminary investigation and issued a resolution stating that there exists a prima facie case for murder against complainant. Respondent then forwarded the records of the preliminary investigation to the provincial prosecutor's office. This, according to complainant, constitutes knowingly rendering an unjust order.

In his comment, respondent judge admits being the nephew-in-law of the deceased, Rafael Benemerito. Thus, respondent admits that he is related by affinity to the victim, ex-Mayor Rafael Benemerito, and the complaining witness, Mrs. Thelma Benemerito, in Criminal Case No. 9448-P. Respondent being their nephew-in-law, their relationship is within the third civil degree of affinity. However, respondent contends that he committed no error in the conduct of the "preliminary examination"[5] of Criminal Case No. 9448-P. In support of his contention, he cites Rule 112, Section 6(b) of the Rules of Court which states that the judge conducting the preliminary investigation may issue a warrant of arrest if he is satisfied that probable cause exists and there is a need to place the accused under custody. He also cites the case of *Perez v. Suller*,[6] wherein this Court ruled that Judge Hilarion A. Suller did not commit an irregularity in issuing a warrant of arrest against the

sons of Salvador Perez, the Mayor of San Manuel, Pangasinan, who were the accused in a criminal case wherein the private complainant was Judge Suller's nephew.

Respondent interprets the phrase "to sit in a case" in Rule 137, Section 1 to mean "to sit in judgment or to sit and decide."[7] According to him, the prohibition does not apply to "preliminary examination which is only the first phase of the preliminary investigation".[8] Nor does it apply, in his view, to the "preliminary investigation proper" which is not a judicial but an executive function. It is not a part of the criminal proceedings against an accused, states respondent. Again citing our ruling in *Perez*, he points out that he, nevertheless, refrained from conducting the "preliminary investigation proper" so that no injustice would be committed against the accused, herein complainant. Moreover, respondent avers that complainant could assail in the proper forum the proceedings he conducted, as in fact complainant filed a petition with the Court of Appeals regarding the conduct of the preliminary investigation and his arrest and detention. Finally, respondent denies that his actions were motivated by bias and partiality.

In a manifestation dated December 1, 1999, complainant informed this Court that the Court of Appeals, in CA-G.R. SP No. 54416, ruled that the preliminary investigation conducted by respondent judge "[did] not conform to the constitutional, statutory, and ethical requirements, hence null and void."[9] Attached to the manifestation was a copy of said decision.[10]

For his part, respondent, in a supplemental comment dated December 15, 1999, reiterated that he followed the correct procedure in issuing the warrant for the arrest of the complainant.

In a report submitted to this Court by the Office of the Court Administrator on September 13, 2000, the OCA recommended that respondent be fined in the amount of P10,000 for conducting a preliminary investigation in the subject criminal case, though disqualified by the Rules of Court, and for failing to follow the proper procedure in the preliminary investigation of the criminal case against complainant. However, the OCA observed that while respondent judge indeed erred in issuing a warrant of arrest against complainant, there is no evidence to hold him liable for knowingly rendering an unjust order.

Taking into account the OCA report and after carefully considering the record of this administrative matter, we find that respondent has indeed violated Rule 137, Section 1 of the Rules of Court in conducting the preliminary investigation in Criminal Case No. 9448-P.

The aforecited rule provides:

> SECTION 1. *Disqualification of judges.* -- No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, *or in which he is related to either party within the sixth degree of consanguinity or affinity*, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling