

FIRST DIVISION

[A.M. No. MTJ-01-1384 (formerly OCA IPI No. 00-970-MTJ), April 11, 2002]

RASMIA U. TABAO, COMPLAINANT, VS. ACTING PRESIDING JUDGE ACMAD T. BARATAMAN, MTCC, BRANCH 1, MARAWI CITY, RESPONDENT.

DECISION

PUNO, J.:

The present administrative case stems from an affidavit-complaint^[1] filed by complainant Rasmia U. Tabao charging respondent Judge Acmad Barataman, in his capacity as acting presiding judge of MTCC, Branch 1, Marawi City, with gross ignorance of the law and grave abuse of discretion.

Complainant Rasmia Tabao is the private complainant in Criminal Case No. 9106 entitled "People vs. Samsodin M. Tabao" for abandonment of minor. It appears that on July 16, 1998, respondent judge issued an Order^[2] granting the motion for bail on recognizance filed by the father of the accused pursuant to R.A. No. 6036. The motion of the prosecution to cancel bail on the ground that accused is a certified public accountant and can afford to post cash bond was denied by respondent judge in an Order dated June 30, 1999,^[3] stating that the law, in allowing bail on recognizance, does not distinguish whether an accused is rich or poor.

Complainant avers that respondent committed grave abuse of discretion in granting the motion for bail on recognizance because (1) it was filed not by the accused but by his father, Hadji Yusoph Tabao; (2) the prosecutor was not furnished a copy of the motion and there was no hearing conducted; (3) it lacked the sworn statement of the accused signed in the presence of two witnesses; and (4) the motion and its supporting affidavit were signed by the father of the accused. Complainant also contends that the accused is not poor but is a certified public accountant and operates a transport business in Metro Manila. Thus, it is urged that he should not have been released on recognizance since he could put up a cash bond.

In his comment, respondent judge alleges that the crime of abandonment of a minor is covered by the Rules on Summary Procedure and hence bail on recognizance is not required as the court can immediately arraign and try the accused, pursuant to Section 13 of the Rules; that if he were the acting judge when the criminal case was filed, he would not issue a warrant of arrest but order the immediate arraignment and trial of the case and there would be no need to discuss the matter of bail; and, that the court can appoint as custodian of the accused his father, a former City Councilor of Marawi City, who qualifies as a responsible person under Section 15, Rule 144 of the Rules of Court.

On November 6, 2001, Court Administrator Presbitero J. Velasco, Jr. submitted a

Memorandum^[4] finding respondent judge guilty of gross ignorance of the law for releasing the accused on recognizance before it could acquire jurisdiction over his person. The accused was still at large when the motion for bail was filed. He likewise found the respondent judge to have violated R.A. No. 6036. He ratiocinated: first, the law requires that the accused sign in the presence of two witnesses of good standing in the community a sworn statement binding himself, pending final decision of his case, to report to the Clerk of Court hearing the case periodically every two weeks. No such sworn statement was executed by the accused and; second, in order to be released on recognizance, the accused must be unable to post bail bond. The accused is a CPA and can afford to post bond. The Court Administrator recommends that respondent judge be ordered to pay a fine of P20,000.00, considering that it is his first offense, with a warning that a repetition of the same or similar offense shall be dealt with more severely.

We agree with the finding of the Office of the Court Administrator. The respondent judge is liable in granting the motion for bail on recognizance in clear violation of R.A. No. 6036, for the following reasons:

First. Section 1 of R.A. No. 6036 provides that "any provision of law to the contrary notwithstanding, bail shall not be required of a person charged with violation of a criminal offense the prescribed penalty for which is not higher than six months imprisonment and/or a fine of two thousand pesos, or both." Instead of bail, Section 2 states that the person charged "shall be required to sign in the presence of two witnesses of good standing in the community a sworn statement binding himself, pending final decision of his case, to report to the Clerk of Court hearing his case periodically every two weeks. The Court may, in its discretion and with the consent of the person charged, require further that he be placed under the custody and subject to the authority of a responsible citizen in the community who may be willing to accept the responsibility. In such a case the affidavit herein mentioned shall include a statement of the person charged that he binds himself to accept the authority of the citizen so appointed by the Court."

In the present case, it is not disputed that the sworn statement supporting the motion for bail filed before respondent judge was signed, not by the accused but by his father. The failure of the accused to sign the sworn statement is in clear contravention of the express mandate of the law that the person charged shall sign a sworn statement binding himself to report to the Clerk of Court. This is a personal obligation imposed by R.A. No. 6036 on the accused and cannot be assumed by the custodian or responsible citizen who may be appointed by the court. It is different from Section 15, Rule 114 of the Rules of Criminal Procedure which allows the release of the accused on his own recognizance or that of a responsible person. R.A. No. 6036 applies to criminal cases where the prescribed penalty is not higher than six months imprisonment and/or a fine of P2,000.00, or both. In the case at bar, accused stands charged with abandonment of a minor which carries with it the imposable penalty of *arresto mayor* and/or a fine of P500.00. Hence, it was erroneous for respondent judge to have granted the motion for bail on the basis of the affidavit of the father of the accused.

Moreover, R.A. No. 6036 allows the release of the accused on his own recognizance only where it has been established that he is unable to post the required cash or bail bond. The accused in this case is a CPA who is engaged in the transport business. We reject the contention of respondent judge that the law does not distinguish