

THIRD DIVISION

[A.M. No. MTJ-01-1354 (formerly A.M. OCA IPI No. 99-806-MTJ), April 04, 2001]

JUANITO AGULAN, JR., COMPLAINANT, VS. JUDGE OCTAVIO A. FERNANDEZ, FORMERLY OF THE MUNICIPAL CIRCUIT TRIAL COURT, GEN. M. NATIVIDAD-LLANERA, NUEVA ECIJA AND PRESENTLY ACTING PRESIDING JUDGE, MUNICIPAL CIRCUIT TRIAL COURT, BANSALAN-MAGSAYSAY, DAVAO DEL SUR, RESPONDENT.

RESOLUTION

GONZAGA-REYES, J.:

Complainant Juanito Agulan, Jr. and his son Ian Agulan were separately charged with violation of P.D. 1866 (Illegal Possession of Firearms) as amended, before the MCTC-General M. Natividad-Llanera, Nueva Ecija then presided by respondent Judge Octavio A. Fernandez.^[1] Upon preliminary investigation docketed as Criminal Cases Nos. 168-L and 169-L and a finding of probable cause, respondent Judge issued warrants of arrest and recommended bail in the amount of P120,000.00 for each of the accused. Before the warrants could be served, the police prosecutor interceded in behalf of the herein complainant and requested respondent Judge to defer the execution of the warrants and allow the accused to put up a cash bail bond in the reduced amount of P36,000.00 each. Respondent Judge acceded to the request and accepted the amount of P72,000.00 as cash bail bond for both accused. Respondent Judge recalled the warrants of arrest and ordered the release of the accused from custody in his Order dated March 25, 1999.^[2]

In a letter-complaint dated September 29, 1999 addressed to the Chief Justice, herein complainant stated that Teresita Esteban, the Clerk of Court of the MCTC, Natividad-Llanera, Nueva Ecija issued a Certification dated September 22, 1999, to the effect that she did not issue any receipt regarding the cash bonds for the reason both the accused "did not file their cash bonds to the undersigned."^[3] Complainant intimated that respondent Judge did not deposit the cash he accepted and had misappropriated it, and requested that an investigation be made on this matter.

Asked to comment by the Court Administrator on the above mentioned letter-complaint, respondent Judge, in his Letter-Comment dated March 7, 2000, admitted having accepted the cash bail bond in the amount of P72,000.00 but vehemently denied the charge of misappropriation. He claimed that he accepted the cash bonds because it was already night time and the Municipal Treasurer's Office was already closed and that he acted out of compassion in accepting the cash bonds.

It appears that Judge Fernandez was designated as acting Presiding Judge of MCTC, Bansalan, Magsaysay, Davao Del Sur on August 27, 1999, and Judge Efren Mallare took over as acting Presiding Judge of MCTC-Gen. Natividad-Llanera, Nueva Ecija. In

an Order dated April 26, 2000, the criminal cases against herein complainant and his son were dismissed by Judge Mallare.

In a letter dated May 9, 2000 addressed to the Court Administrator, herein complainant stated that respondent Judge had fully restituted the amount of P72,000.00, P36,000.00 in cash and P36,000.00 in personal check, and that he is withdrawing his administrative complaint against respondent Judge.

The case was referred to the Office of the Court Administrator for Investigation, Report and Recommendation. (Ret.) Justice Narciso Atienza, consultant in the Office of the Court Administrator, conducted a hearing and submitted his Report. He stated that Rule 114 specifically mentions the persons with whom a cash bail bond may be deposited namely: the collector of internal revenue, or the provincial, city or municipal treasurer, and that a judge is not one of those mentioned therein and he should not have accepted the money deposited. Moreover, the order of release issued by respondent judge did not comply with the Rules. The report stated:

"The order of release issued by the respondent is illegal for the requirements of Section 11, Rule 114 of the Rules on Criminal Procedure, as amended, was not complied with particularly the submission of the proper certificate of deposit issued by any of the persons authorized by law to accept cash bail bond, and the written undertaking showing compliance with Section 2 of Rule 114. The order is neither a certificate of proper deposit nor a written undertaking as required by law. The respondent did not even require the accused to submit photographs showing the face, left and right profiles.

Respondent testified that he was not able to deposit the cash bail bonds posted by the accused with the municipal treasurer because the treasurer was not in his office when he went there. This is a lame excuse because, assuming that the Municipal treasurer was not in his office when the respondent went there, if he really did, certainly there must be other personnel in the office of the municipal treasurer who could accept the cash bail bonds and issue the corresponding receipt. If respondent had no time going back to the office of the municipal treasurer, he should have turned over the money to the Clerk of Court and order her deposit the same to any of the government officials mentioned in the law.

After Criminal Cases Nos. 168-L and 169-L were dismissed sometime in February, 2000, complainant's counsel filed a motion for the release of the cash bail bonds. The Clerk of Court was not able to release the money because it was in the possession of the respondent who was then at his station in MCTC Bansalan-Magsaysay, Davao del Sur. The money was released only on May 9, 2000, after respondent issued an order dated April 26, 2000, ordering the Clerk of Court to release the money which came from him, P36,000.00 of which was in cash and P36,000.00 was in respondent's personal check.

Seventy Two Thousand Pesos (P72,000.00) in cash was received by the respondent as cash bail bonds from the complainant. What was released to complainant, however, was P36,000.00 cash and 36,000.00 in check which is a clear proof that money posted as cash bail bonds was used by

the respondent. The allegation of the respondent that the office of the Municipal Treasurer refused to issue receipt in view of on going reorganization in the office is a devious excuse to keep the posted cash bail bonds in his possession. Respondent's action placed his integrity in serious doubt."

The Investigating Justice recommends that respondent Judge be penalized with a fine of P2,000.00. The Court Administrator recommended approval of the Report.

We find the recommendation of the Court Administrator well-taken, but resolve to increase the penalty.

At the hearing of this administrative case, herein complainant testified that he was detained at the time he gave the amount of P72,000.00 to respondent Judge at around 2:00 P.M. and that the latter gave him the Order of Release while in custody. [4] He further testified that he was not given a receipt by respondent Judge who told him that the clerk of court would issue a receipt; [5] and that when he posted the cash bail bond, it was "all in cash", but when the said amount was returned to him, P36,000.00 was in the form of check and P36,000.00 was in the form of cash. [6]

Respondent Judge, on the other hand, testified that he received the amount of P72,000.00 at around 9:00 P.M. and placed the money in a safety deposit box in his own office; that from March 1999 when the cash bail bond was deposited until August 26 or 29, 1999 when he was detailed in Davao, he did not give the money to the clerk of court; that he was supposed to deposit the money with the municipal treasurer but since the latter was out at the time, he informed the clerk of court that the amount was deposited with him (respondent); that he was not able to deposit the money with the municipal treasurer because the latter was on leave and the assistant treasurer informed him that they could not issue any receipt until such time that the reorganization of the treasurer's office would be completed; hence respondent Judge instead issued a certificate of deposit and attached it to the records of the case. [7]

The rules specify the persons with whom a cash bail bond may be deposited namely: the collector of internal revenue, or the provincial, city or municipal treasurer. Section 14 [8] of Rule 114 of the Revised Rules of Criminal Procedure (effective December 1, 2000) provides:

"Sec. 14. Deposit of Cash as Bail. - The accused or any person acting in his behalf may deposit in cash with the nearest collector of internal revenue or provincial, city or municipal treasurer the amount of bail fixed by the court, or recommended by the prosecutor who investigated or filed the case. Upon submission of a proper certificate of deposit and of a written undertaking showing compliance with the requirements of section 2 of this Rule, the accused shall be discharged from custody. The money deposited shall be considered as bail and applied to the payment of fine and costs while the excess, if any, shall be returned to the accused or to whoever made the deposit." (underscoring supplied).

A judge is not one of those authorized to receive the deposit of cash as bail, nor should such cash be kept in the office of the judge.

Respondent Judge's explanation that he was not able to deposit the cash bail bond with the municipal treasurer because the latter was not in his office when he went there, is a lame excuse. As correctly pointed out by the Investigating Justice, even assuming that the municipal treasurer was not in his office when respondent Judge went there, certainly there would be other personnel authorized to receive and accept the cash bail bond and issue the corresponding receipt. If respondent Judge did not have the time to go back to the municipal treasurer's office, he could have directed his clerk of court to deposit the same with any of the government officials mentioned in the rules.

The proper procedure in the handling of cash submitted or given to the municipal court as bail bond is for the court to formally direct the clerk of court to officially receive the cash and to immediately deposit it with the municipal treasurer's office. The transaction must not only be properly receipted for but should also appear in the records of the case.^[9]

Clearly, respondent Judge disregarded the rules on the posting of bail. The alleged plea by the accused not to be incarcerated since it was already night time is not a valid reason for respondent Judge's acceptance of the cash and depositing it in the office instead of with the officials named in the Rules. He violated the rules by receiving the money and by keeping the cash bond in the safety deposit box in his office to await the final outcome of the case.^[10]

As it turned out, when the amount of P72,000.00 which was admittedly received and accepted by respondent Judge in March 1999 was returned and released on May 9, 2000, upon motion of herein complainant in view of the dismissal of the criminal cases against the latter, but the amount returned consisted of P36,000.00 in the form of a personal check of respondent Judge and P36,000.00 in cash. There was no credible explanation as to why respondent Judge issued his personal check for the P36,000.00 when the entire amount of P72,000.00 was supposed to be deposited in the office vault by his own account. Respondent Judge testified:

"JUSTICE ATIENZA:

Now, from March of 1999 up to the date that you were detailed to Davao why did you not give the money to the Clerk of Court?

WITNESS:

What happened, Your Honor, was that the Clerk of Court. . . I was supposed to give the money to the municipal treasurer because that was the provision of the revised rules that the money deposited must be with the municipal treasurer but since the municipal/provincial treasurer was out at that time I informed the Clerk of Court that the amount was already deposited to me and she said that since the amount was there and the order of release was already made, well she would not receive the money and so she did not issue any receipt but with an understanding that anytime the case will be disposed of we will just follow the rules of court that we will release the amount after the final outcome of the case.

JUSTICE ATIENZA: