

## THIRD DIVISION

**[ A.M. No. MTJ-00-1261, March 30, 2000 ]**

**NOE CANGCO ZARATE, COMPLAINANT, VS. JUDGE ISAURO M. BALDERIAN, MUNICIPAL CIRCUIT TRIAL COURT OF CARMONA-GEN. MARIANO ALVAREZ, CAVITE,<sup>[1]</sup> respondent.**

### DECISION

#### **PANGANIBAN, J.:**

A judge who commits a patent error on so elementary a subject is administratively liable for gross ignorance of the law. Such liability is aggravated by a callous disregard of direct orders of this Court.

#### **The Case**

Before this Court is a Complaint for gross ignorance of the law and serious misconduct filed with the Office of the Court Administrator on February 22, 1996. The Complaint was filed by Atty. Noe Cangco Zarate against Judge Isauro M. Balderian, who was at the time the presiding judge of the Municipal Circuit Trial Court of Carmona-Gen. Mariano Alvarez, Cavite.

In a Resolution dated October 7, 1996, the Court required respondent to comment on the Complaint. He failed to do so. Thereafter, in a Resolution dated December 3, 1997, he was required (1) to show cause why he should not be disciplinarily dealt with for failure to file the required Comment and (2) to file the said Comment.

Because the December 3, 1997 Resolution had been returned unclaimed, the Court, in a later Resolution dated April 27, 1998, required the service of the former resolution through the executive judge of the Regional Trial Court, Cavite. In his letter dated December 23, 1998, Executive Judge Christopher Lock informed the Court that the December 3, 1997 Resolution had been served on respondent judge at the Municipal Trial Court of Bacoor, Cavite. This fact was evidenced by the Return dated December 22, 1998, signed by Clerk of Court IV Jose Lagac, who had personally served it.

Notwithstanding the service of the December 3, 1997 Resolution, however, respondent failed to file the required Comment. In its September 1, 1999 Memorandum, the Office of the Court Administrator recommended that he be fined in the amount of P5,000 for failure to comply with the directive of the Court dated December 3, 1997. In its September 22, 1999 Resolution, the Court reduced the fine to P2,000. The Court further directed his detention in case he failed to pay the fine.

To this day, respondent has not yet complied with either Court Resolution. Considering the length of time that has elapsed, he is deemed to have waived his right to file his Comment. The administrative case is therefore submitted for

resolution on the basis of the records before this Court.

### **The Facts**

The facts are narrated in the Court Administrator's September 1, 1999 Memorandum<sup>[2]</sup> as follows:

"In a verified complaint dated February 2, 1996, Atty. Noe Cangco Zarate charged respondent Judge Isauro M. Balderian (formerly acting presiding Judge of MCTC, Carmona, Gen. Mariano Alvarez, now presiding Judge of MTC, Bacoor, Cavite) with gross Ignorance of the law, incompetence or serious misconduct for ordering complainant's arrest and incarceration in view of the latter's failure to appear in court despite proper notice and for failure to make good his promise that he will facilitate the repair of the vehicle, subject matter of Crim. Case No. CC-95-118, entitled 'People of the Philippines vs. Luis Hemopia y Donado', for [d]amage to [p]roperty [t]hrough [r]eckless [i]mprudence.

"Complainant, who is the counsel for the accused in the aforecited criminal case, alleges that the criminal action arose from a vehicular accident involving a damage claim of P30,000.00 with the accused offering to pay P15,000.00 as per assessment of the Insurance company as the rightful sum due.

"During the pre-trial conference, the offended party refused the option to have the vehicle repaired by a repair shop of his choice, hence the trial was set on December 1, 1995 at 9:00 o'clock in the morning. While the accused appeared, his counsel, complainant herein, failed to appear on time. For such non-appearance, the respondent Judge immediately issued an ORDER dated December 1, 1995 quoted as follows:

'Upon calling this case for initial trial, accused Luis Hemopia appeared in Court, devoid of counsel. In view thereof, the private prosecutor moved for the arrest of the defense counsel for his failure to inform the court of his absence in today's proceedings.

'Wherefore, Atty. Noe Zarate is hereby ordered arrested and incarcerated for his failure to appear in Court despite proper notice and for his failure to make good his promise that he will facilitate the repair of the vehicle, subject matter of the case.

'SO ORDERED.'

"Copies of the warrant of arrest were served on complainant personally at his office through the Makati Police Station and at his residence through the Biñan Police Station.

"On January 3, 1996, complainant filed a Motion for Reconsideration of the aforesaid Order for having been issued without due process of law as the mandatory requirement under Sections 3, 4, and 5 of Rule 71 of the

Rules of Court have not been observed and therefore null and void. He claims that for his failure to appear on time respondent Judge summarily declared him in [c]ontempt of [c]ourt and ordered his immediate and perpetual incarceration when the factual circumstances of such failure to appear simply constitutes indirect contempt which can only be issued after due hearing.

"Said Motion for Reconsideration was calendared for hearing in January 5, 1996, but the judge did not arrive and the clerk of court advised him that the motion would be considered submitted for resolution. The clerk of court then allowed the complainant to go home and no arrest was made.

"On January 13, 1996, while complainant was in the RTC, Makati City, he was arrested by virtue of the same Order and detained for 36 hours at the Warrant Section of the Makati City Police Station. When respondent judge issued the Release Order on January 9, 1996, he wittingly or unwittingly failed to furnish copy of said Order to the Makati City Police. It was precisely x x x such omission that caused the embarrassing detention of complainant from January 15, 1996 to January 16, 1996.

"Complainant seeks relief from having been detained without provision for bail or any other qualification as to preserve his rights to liberty. He was arrested in a bizarre manner in the presence of numerous lawyers, thereby being publicly humiliated, shabbily treated, as if he was a common criminal."<sup>[3]</sup>

### **Issue**

Complainant poses before this Court this solitary issue:

"Whether or not on the basis of facts herein attributed against the herein respondent judicial officer, he has committed gross ignorance of the law, incompetence or serious misconduct in the performance of his judicial duties."<sup>[4]</sup>

### **The Court's Ruling**

For issuing a manifestly erroneous order and for ignoring several Resolutions of this Court, respondent should be sanctioned.

### **The Manifestly Erroneous Order of Respondent**

Without giving complainant an opportunity to explain, respondent issued an Order dated December 1, 1995, directing his arrest because of "his failure to appear in court despite proper notice and for his failure to make good his promise to facilitate the repair of the vehicle, subject matter of the case."

The above-mentioned Order summarily held complainant guilty of direct contempt, pursuant to Section 1 of Rule 71, as amended,<sup>[5]</sup> which provides:

"SECTION 1. *Direct contempt punished summarily.* -- A person guilty of misbehavior in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same, including disrespect toward