

THIRD DIVISION

[A.M. No. MTJ-94-1009, March 05, 1996]

ALBERTO NALDOZA, COMPLAINANT, VS. JUDGE JUAN LAVILLES, JR., RESPONDENT.

D E C I S I O N

MELO, J.:

The sworn letter-complaint dated May 11, 1994 of Alberto Naldoza filed through the Iloilo Regional Office of the Commission on Human Rights (CHR) charges respondent Juan R. Lavilles, Jr., presiding judge of the Municipal Trial Court of Miagao, Iloilo, with irregularity in conducting preliminary investigation, improper issuance of the warrant of arrest, and ignorance of law relative to Criminal Cases Nos. 1726 and 1727, entitled "People of the Philippines vs. Alberto Naldoza" for vote-buying in violation of Article XII, Section 21 of the Omnibus Election Code (BP 881).

Complainant Alberto Naldoza, accused in the aforestated cases was the barangay chairman of Barangay Kirayan, Tacas, Miagao, Iloilo. He ran for re-election in the May 8, 1994 elections. The spouses Generoso Flame and Lucia Flame and the spouses Marion Piedad and Rosemarie Piedad thereafter accused complainant of vote-buying in winning the election. Accordingly, the Chief of Police of Miagao with whom the charge was lodged, filed on May 8, 1994, two separate complaints against Naldoza for vote-buying in violation of Section 21, Article XII of the Omnibus Election Code (BP 881). Both cases were assigned to respondent judge's court and docketed thereat as Criminal Cases Nos. 1726 and 1727.

Respondent examined the private complainants, adopting for the purpose the transcript of the question-and-answer type of examination conducted by the Chief of Police and sworn to before him by the parties.

On May 10, 1994, respondent issued an order finding probable cause to believe complainant Naldoza committed the crime charged, and respondent thereupon issued the warrants for complainant's arrest in the 2 criminal cases, fixing the bail at P 10,000.00 in each case, for his provisional liberty. Complainant was arrested and detained.

On May 11, 1995, respondent issued an order, directing complainant to appear before the court and to submit his counter-affidavit and those of his witnesses within 10 days from receipt of a copy of the complaints and affidavits of prosecution witnesses pursuant to Section 3(b), Rule 112 of the 1985 Rules on Criminal Procedure, as amended.

Complainant filed a motion to quash the complaints against him and to lift the warrants of arrest on the ground that the preliminary investigation was irregularly conducted and the warrants of arrest improperly issued, thereby denying him due

process. The motion was denied by respondent in his order of May 31, 1994, for the reason therein stated and referred the cases to the Commission on Elections (COMELEC) for further proceedings.

On June 6, 1994, respondent issued another order, reconsidering his order of May 31, 1994 insofar as it referred the cases to the COMELEC. The cases were instead remanded to the Chief of Police of Miagao, Iloilo with instructions to file the same directly with the provincial prosecutor. The warrants of arrest were lifted and complainant's release was ordered.

In the meantime, complainant filed an administrative complaints against respondent with the Commission on Human Rights, protesting the irregularity in the conduct of preliminary investigation, the improper issuance of the warrants of arrest, and for ignorance of law.

On the basis of the investigation and final report of Spl. Investigator IV Leonardo Nuñez, the CHR in its resolution of August 6, 1994, recommended that an administrative complaint be filed against respondent for the issuance of an unjust interlocutory order and ignorance of law which resulted in the arrest and incarceration of complainant Alberto Naldoza. The resolution was forwarded to the Office of the Administrator of this Court, for proper disposition. Further, the CHR recommended that financial assistance be afforded complainant Alberto Naldoza.

In his comment filed on February 14, 1995, by way of compliance with the Court's resolution of November 21, 1994, respondent denied all the charges.

Refuting the charge that serious irregularities were committed in the conduct of the preliminary investigation for non-compliance with Section 3, Rule 112 of the Rules of Court, respondent explained that the offense of vote-buying is punishable by a penalty of imprisonment of not less than 1 year but not more than 6 years (Sec. 264, Omnibus Election Code), but pursuant to Republic Act No. 7691 the jurisdiction of municipal trial courts was expanded, such that the said offense is now within the exclusive jurisdiction of said courts. Consequently, respondent argued, Section 3, Rule 112 is no longer applicable.

Respondent further argued that the certification of affidavits of complaining witnesses was not necessary since the complainants were brought directly before the police where their statements were taken in question-and-answer type, reduced in writing and signed under oath, and that even granting that such certification is required, non-compliance with such certification does not necessarily mean that respondent committed serious irregularities in conducting preliminary investigation.

With regard to the complaint for improper issuance of the warrants of arrest, respondent contended that he examined the witnesses and conducted searching questions before issuing the warrants. The necessity of placing complainant under arrest is a matter addressed to judicial discretion, he contended.

As to the charge of ignorance of the law for failure to comply with Section 4 of COMELEC Resolution No. 2695 (authorizing chiefs of police to conduct the preliminary investigation of charges for violation of the Omnibus Election Code) respondent averred that the complaint which commenced Criminal Cases Nos. 1726 and 1727 was filed on May 10, 1994, barely 45 days after the passage of the

aforementioned COMELEC Resolution. It would hardly be fair, respondent continued, to expect him to be immediately aware of the existence of COMELEC Resolution No. 2695.

On June 26, 1995, The Office of the Court Administrator submitted its memorandum pertinently stating:

An examination of COMELEC Resolution No. 2695 as hereunder quoted from and cited in the COMELEC Resolution (Region VI, Iloilo City) dated August 6, 1994 in CHR Case No. 94-ILO-33 (entitled Naldoza vs. Lavilles, Jr.) shows that it applies only to preliminary examination by the Chief of Police or his duly authorized PNP representative, of violations of the Omnibus Election Code and other election laws; it presupposes warrantless arrest of respondent by the arresting officer or policeman.

Sec. 1. Preliminary examination by Chief of Police. All persons apprehended for violations of the ban on bearing, carrying and transporting of firearms and employment of security personnel and other violations of the Omnibus Election Code and other election laws shall be subject to preliminary examination by the Chief of Police or his duly authorized PNP representative.

Sec. 2. Statements and Evidences - In the preliminary examination, the Chief of Police or his duly authorized investigator shall take the statement of the respondent, require the affidavit of the arresting officer or policeman indicating therein the fact of arrest and the circumstances surrounding the arrest; confiscate the firearm, and other deadly weapons and issue the proper receipt therefor in appropriate cases and finally cause the respondent to sign an affidavit binding himself to be present at the preliminary investigation at a latter date before the prosecutor, and that failure to do so shall constitute an express waiver of his right to present evidence for his defense.

Sec. 3. Proceedings in the preliminary examination. Any person arrested for any violation and undergoing examination must be treated humanely and with outmost respect for his constitutional rights, specially according him, although not limited to the following rights.

(a) the right to be informed of his rights to remain silent and to have competent and independent counsel preferably of his own choice, and if he cannot afford the services of his counsel, he will be provided with one;

(b) the right to remain silent, which cannot be waived except in writing and in the presence of counsel;