

## **FIRST DIVISION**

**[ A.M. No. MTJ-93-773, September 03, 1996 ]**

**ATTY. JOSE A. BERSALES, COMPLAINANT, VS. JUDGE DIOSDADO C. ARRIESGADO, RESPONDENT.**

### **R E S O L U T I O N**

#### **KAPUNAN, J.:**

In an affidavit-complaint dated February 26, 1993, Atty. Jose A. Bersales charges Judge Diosdado C. Arriesgado, Municipal Trial Court, Molave, Zamboanga del Sur, with gross ignorance of the law and grave abuse of authority relative to his issuance of a warrant of arrest in Criminal Case No. 4259 for Falsification of Public Document against the complainant and his client, Gregorio L. Lumapas.<sup>[1]</sup>

The complaint in Criminal Case No. 4259 was filed by the Chief of Police, of Molave, Zamboanga del Sur. The Police Chief charged Atty. Bersales and Lumapas with having filed with this Court a "falsified" verified complaint, docketed as A.M. No. RTJ-93-951, against Judge CAMILO E. TAMIN, Regional Trial Court, Branch 23, Molave, Zamboanga del Sur dated December 15, 1992, supported by the sworn affidavit of Lumapas. Atty. Bersales allegedly made untruthful statements in the narration of facts in his complaint in A.M. No. RTJ-93-951, specifically, that he and Lumapas were not present in Judge Tamin's court on March 19, 1992, when the truth of the matter was that at the request of Atty. Bersales, he and Lumapas had a conference in the chambers of Judge Tamin on said date, during the hearing of Civil Case No. 90-20,015 (2631).<sup>[2]</sup>

In A.M. RTJ-93-951, Atty. Bersales had charged Judge Tamin with "falsification of judicial proceedings" relative to the latter's Order dated March 19, 1993 wherein he stated that in a conference in his chambers, Atty. Bersales and Lumapas were given ten days within which to file an answer to a previous show cause order. Atty. Bersales asserted that he and Lumapas never appeared before Judge Tamin on said date.<sup>[3]</sup>

The complaint in Criminal Case No. 4259 was filed with respondent Judge for preliminary investigation. Acting on the complaint, respondent Judge issued a warrant of arrest dated February 16, 1993.<sup>[4]</sup>

Atty. Bersales in his affidavit-complaint in the instant case alleges that by virtue of the warrant, on February 24, 1992 while at the house of his clients, Mr. and Mrs. Mauro Bienes in Molave, he was arrested by three policemen, hauled into a Police vehicle, brought to the municipal jail, was booked and detained; that he was greatly embarrassed and humiliated by his arrest, which was witnessed by many officials and prominent people of Molave; and that respondent judge issued the warrant of arrest in connivance with Judge Tamin, who caused the filing of Criminal Case No. 4259 in retaliation for Atty. Bersales' filing of A. M. No. RTJ-93-951 against Judge

Tamin.

In his comment, respondent Judge contends that the warrant of arrest was properly issued in accordance with the Rules of Court.<sup>[5]</sup>

After respondent judge filed his comment, the Court referred the matter to Executive Judge Franklyn A. Villegas, Regional Trial Court, Pagadian City, Zamboanga del Sur, Branch 19, for investigation, report and recommendation.<sup>[6]</sup>

In his Report dated January 2, 1995, the investigating Judge made the following conclusions:

In the case at bar, complainant Atty. Jose A. Bersales is an active practicing lawyer whose law office is located in Pagadian City. Pagadian City is a small City wherein everybody knows almost everybody. It is the considered view of the undersigned Investigating Judge that there was no necessity of placing complainant under immediate custody in order not to frustrate the ends of justice when Criminal Case No. 4259 for Falsification of Public Document was filed before the court of respondent Judge Diosdado C. Arriesgado for preliminary investigation. What the Municipal Judge could have done was to conduct a preliminary investigation by directing the respondent therein who is the complainant herein to submit his counter-affidavit in order to give him his day in court during the conduct of the preliminary investigation. After conducting the requisite preliminary investigation, if the respondent judge is convinced that probable cause exists for the issuance of the warrant, he may issue such warrant of arrest for the arrest of complainant herein. In that way surprises are avoided, and due process is properly observed. While it is true that complainant herein after having been confronted with the subject warrant of arrest issued by respondent herein, put up bail for his provisional liberty, and therefore, such putting up of bail may be considered waiver of any defect of the issuance of the subject warrant of arrest, such submission of bail was the only available way of complainant under the circumstances prevailing if only to avoid imprisonment. The fact remains that when complainant was confronted with the warrant of arrest, it indeed came to (sic) a surprise for him. It may be worth mentioning that when Criminal Case No. 4259 for Falsification of Public Document filed by Police Inspector Motalis T. Banding against herein complainant Atty. Jose A. Bersales was elevated to the Office of the Provincial Prosecutor of Zamboanga del Sur for review, the same has been dismissed. While respondent herein, as mentioned earlier, did not commit gross ignorance of law or abuse of authority in issuing the warrant of arrest to arrest on (sic) complainant herein, respondent should be warned to be more careful in issuing warrants of arrest, and to give meaning to the phrase that "there is necessity of placing respondent under immediate custody in order not to frustrate the ends of justice."<sup>[7]</sup>

We find that respondent Judge's having issued a warrant of arrest against Atty. Bersales in Criminal Case No. 4259 is unfortunate.

From the allegations of the complaint filed in the criminal case, it can at once be gleaned that there was pending before this Court an administrative case, A.M. No.