

## **FIRST DIVISION**

**[ A.M. No. RTJ-99-1444 (Formerly OCA-IPI-96-227-RTJ), August 03, 2000 ]**

**STATE PROSECUTOR ROMULO S. J. TOLENTINO, ACTING  
PROVINCIAL PROSECUTOR, COMPLAINANT, VS. JUDGE NILO A.  
MALANYAON, REGIONAL TRIAL COURT, BRANCH 30, CAMARINES  
SUR, RESPONDENT.**

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

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

A letter-complaint, dated July 8, 1996 was filed by State Prosecutor and Camarines Sur Acting Provincial Prosecutor Romulo S. J. Tolentino against Honorable Nilo A. Malanyaon, Acting Designate Judge of RTC, Branch 30, San Jose, Camarines Sur for acts in excess of his jurisdiction and in grave abuse of discretion and for violations of Canons 1, 2, and 3 of the Canons of Judicial Conduct, by knowingly issuing unjust orders dismissing the following criminal cases without seriously determining the operative facts and applicable law, namely:

1. People vs. Judge Panday, Criminal Case No. 1461, for Child Abuse;
2. People vs. Estephen Florece, Criminal Case Nos. T-1458 and 1460, for Child Abuse;
3. People vs. Estephen Florece, Criminal Case Nos. T-1457 and T-1459, for Corruption of a Minor.

The letter-complaint charged that respondent judge dismissed the criminal cases without seriously determining the operative facts, in cavalier disregard of due process, motivated by bad faith, partiality, falsehood, intentionally to cause undue injury to the state and the private complainant by giving unwarranted benefits to the accused.

The charges may be summarized as follows:

In Criminal Case No. T-1461, respondent judge issued an order dated November 17, 1995, finding "no factual basis for the conclusion made by the Regional State Prosecutor that the victim is a child exploited in prostitution," directing the prosecutor "to show cause why this court should order the arrest of the accused" and setting the case for hearing on December 14, 1995 for reception of additional affidavits of witnesses.

At the date set for hearing, complainant prosecutor did not present additional affidavits, maintaining that there was no necessity for proving the factual basis of his conclusion alleged in the information because his materiality of evidence for this purpose is proper for presentation during the trial.

On January 10, 1996, respondent issued an order dismissing the aforesaid case holding that probable cause had not been established by the prosecution, hence it was constitutionally impermissible to issue a warrant for the arrest of accused Judge Panday.

Likewise, on January 25, 1996, respondent judge also dismissed Criminal Cases Nos. T-1458 and T-1460 ruling that there was no evidence in the records of the case that the victim is a child exploited in prostitution as defined in Section 5, Article 111 of RA 7610 and that there was no probable cause for the issuance of a warrant for the arrest of accused Florece.

Complainant further alleged that Criminal Case No. T-1457 and T-1459 were also dismissed by the respondent on March 11, 1996 for the reason that complainant's non-appearance and his failure to adduce evidence violated accused's right to speedy trial. The motion for reconsideration thereafter filed by herein complainant was likewise dismissed.

Finally, complainant had filed several motions and incidents but the same had remained unresolved by the respondent up to the date the instant complaint was filed, to wit: (a) Motion dated January 22, 1996 for the inhibition of respondent; (2) Omnibus Motion dated March 4, 1996 in the five (5) cases for respondent's inhibition, consolidation and joint trial and for resolution of complainant's objection and queries; (3) Motion for Reconsideration and Motion to Resolve Pending Incidents in the five (5) cases dated March 18, 1996; (4) Motion to Resolve dated April 4, 1996; and (5) Last Motion To Resolve Pending Incidents by Recalling Order of April 15, 1996 and Notice Ex Abundante Cautela dated April 23, 1996.<sup>[1]</sup>

In his Comment, dated March 26, 1997,<sup>[2]</sup> respondent judge argued that the petition be dismissed on the ground that the petitioner is guilty of forum-shopping having filed the instant administrative case with this Court and a petition for review with the Court of Appeals in CA-G.R. SP No. 43348 to set aside the five (5) orders of respondent in the criminal cases, the dismissal of which was the ground of the administrative complaint. Respondent claimed that complainant concealed from this Court the fact that he had earlier filed the petition for review with the Court of Appeals docketed involving the facts and issues.

With regard to his alleged failure of the respondent to resolve the motions/incidents beyond the reglementary period, respondent made the following explanation:

First, on the motion for his inhibition in Criminal Case No. T-1461, respondent judge alleges that his inhibition is being asked because of his refusal to be cowed by the threat of herein complainant and his refusal to submit to the imposition of herein complainant on the pretext of violation of their rights to due process.<sup>[3]</sup>

Second, on the motion for consolidation of the five (5) criminal case, respondent reasons that the said motion dated March 4, 1996 was filed after the Order in Criminal Case No. T-1461 and in Criminal Case Nos. T-1458 and T-1460 both dated January 10, 1996, finding no probable cause for the issuance of warrants of arrest against accused judge Panday and Florece, respectively, was already issued by respondent judge. Respondent claims that the learned complainant may well be informed that by the Order of the Honorable Court dated January 4, 1996,