353 Phil. 796

FIRST DIVISION

[A.M. MTJ-98-1147, July 02, 1998]

JESUS S. CONDUCTO, COMPLAINANT, VS. JUDGE ILUMINADO C. MONZON, RESPONDENT.

R E S O L U T I O N

DAVIDE, JR., J.:

In a sworn letter-complaint dated 14 October 1996,[1] complainant charged respondent Judge Iluminado C. Monzon of the Municipal Trial Court in Cities, San Pablo City, with ignorance of law, in that he deliberately refused to suspend a barangay chairman who was charged before his court with the crime of unlawful appointment under Article 244 of the Revised Penal Code.

The factual antecedents recited in the letter-complaint are not controverted.

On 30 August 1993, complainant filed a complaint with the Sangguniang Panlungsod of San Pablo City against one Benjamin Maghirang, the barangay chairman of Barangay III-E of San Pablo City, for abuse of authority, serious irregularity and violation of law in that, among other things, said respondent Maghirang appointed his sister-in-law, Mrs. Florian Maghirang, to the position of barangay secretary on 17 May 1989 in violation of Section 394 of the Local Government Code. At the same time, complainant filed a complaint for violation of Article 244 of the Revised Penal Code with the Office of the City Prosecutor against Maghirang, which was, however, dismissed[2] on 30 September 1993 on the ground that Maghirang's sister-in-law was appointed before the effectivity of the Local Government Code of 1991, which prohibits a *punong barangay* from appointing a relative within the fourth civil degree of consanguinity or affinity as barangay secretary. The order of dismissal was submitted to the Office of the Deputy Ombudsman for Luzon.

On 22 October 1993, complainant obtained Opinion No. 246, s. 1993[3] from Director Jacob Montesa of the Department of Interior and Local Government, which declared that the appointment issued by Maghirang to his sister-in-law violated paragraph (2), Section 95 of B.P. Blg. 337, the Local Government Code prior to the Local Government Code of 1991.

In its Revised Resolution of 29 November 1993,[4] the Office of the Deputy Ombudsman for Luzon dismissed the case, but ordered Maghirang to replace his sister-in-law as barangay secretary.

On 20 December 1993, complainant moved that the Office of the Deputy Ombudsman for Luzon reconsider[5] the order of 29 November 1993, in light of Opinion No. 246, s. 1993 of Director Montesa.

Acting on the motion, Francisco Samala, Graft Investigation Officer II of the Office of the Deputy Ombudsman for Luzon, issued an order[6] on 8 February 1994 granting the motion for reconsideration and recommending the filing of an information for unlawful appointment (Article 244 of the Revised Penal Code) against Maghirang. The recommendation was duly approved by Manuel C. Domingo, Deputy Ombudsman for Luzon.

In a 3rd indorsement dated 4 March 1994,[7] the Deputy Ombudsman for Luzon transmitted the record of the case to the Office of the City Prosecutor of San Pablo City and instructed the latter to file the corresponding information against Maghirang with the proper court and to prosecute the case. The information for violation of Article 244 of the Revised Penal Code was forthwith filed with the Municipal Trial Court in Cities in San Pablo City and docketed as Criminal Case No. 26240. On 11 April 1994, the presiding judge, respondent herein, issued a warrant for the arrest of Maghirang, with a recommendation of a P200.00 bond for his provisional liberty.

With prior leave from the Office of the Deputy Ombudsman for Luzon, on 4 May 1995, the City Prosecutor filed, in Criminal Case No. 26240, a motion for the suspension[8] of accused Maghirang pursuant to Section 13 of R.A. No. 3019, as amended, which reads, in part:

> SEC. 13. Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a single or as complex offense and in whatever stage of execution and mode of participation, is pending in Court, shall be suspended from office.

In his Order of 30 June 1995,[9] respondent judge denied the motion for suspension on the ground that:

> [T]he alleged offense of UNLAWFUL APPOINTMENT under Article 244 of the Revised Penal Code was committed on May 17, 1989, during [Maghirang's] terms (sic) of office from 1989 to 1994 and said accused was again re-elected as Barangay Chairman during the last Barangay Election of May 9, 1994, hence, offenses committed during previous term is (sic) not a cause for removal (Lizarez vs. Hechanova, et al., G.R. No. L-22059, May 17, 1965); an order of suspension from office relating to a given term may not be the basis of contempt with respect to ones (sic) assumption of the same office under a new term (Oliveros vs. Villaluz, G.R. No. L-34636, May 30, 1971) and, the Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would deprieve (sic) the people of their right to elect their officer. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his fault or misconduct (sic), if he had been guilty if any. (Aguinaldo vs. Santos, et al., G.R. No. 94115, August 21, 1992).

The prosecution moved for reconsideration[10] of the order, alleging that the court had confused removal as a penalty in administrative cases and the "temporary removal from office (or suspension) as a means of preventing the public official, while the criminal case against him is pending, from exerting undue influence, intimidate (sic) witnesses which may affect the outcome of the case; the former is a penalty or sanction whereas the latter is a mere procedural remedy." Accordingly, "while a re-elected public official cannot be administratively punished by removing him from office for offenses committed during his previous term, … said public official can be temporarily removed to prevent him from wielding undue influence which will definitely be a hindrance for justice to take its natural course." The prosecution then enumerated the cases decided by this Court reiterating the rule that what a re-election of a public official obliterates are only administrative, not criminal, liabilities, incurred during previous terms.[11]

In his order of 3 August 1995,[12] respondent denied the motion for reconsideration, thus:

> There is no dispute that the suspension sought by the prosecution is premised upon the act charged allegedly committed during the accused [sic] previous term as Barangay Chairman of Brgy. III-E. San Pablo City, who was subsequently re-elected as Barangay Chairman again during the last Barangay Election of May 9, 1994. Certainly, had not the accused been re-elected the prosecution will not file the instant motion to suspend him as there is no legal basis or the issue has become academic.
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> The instant case run [sic] parallel with the case of Lizares vs. Hechanova, et al., L-22059, May 17, 1966, 17 SCRA 58, wherein the Supreme Court subscribed to the rule denying the right to remove from office because of misconduct during a prior term.
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> It is opined by the Court that preventive suspension is applicable only if there is [sic] administrative case filed against a local official who is at the same time criminally charged in Court. At present, the records of the Court shows [sic] that there is no pending administrative case existing or filed against the accused.
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> It was held in the concluding paragraph of the decision by the Honorable Supreme Court in Lizares vs. Hechanova, et al., that "Since petitioner, having been duly re-elected, is no longer amenable to administrative sanctions for any acts committed during his former tenure, the determination whether the respondent validly acted in imposing upon him one month's suspension for act [sic] done during his previous term as mayor is now merely of theoretical interest."

Complainant then moved that respondent inhibit himself from Criminal Case No. 26240. In his order of 21 September 1995,[13] respondent voluntarily inhibited himself. The case was assigned to Judge Adelardo S. Escoses per order of Executive Judge Bienvenido V. Reyes of the Regional Trial Court of San Pablo City.

On 15 October 1996, complainant filed his sworn letter-complaint with the Office of the Court Administrator.

In his comment dated 14 February 1997, filed in compliance with the resolution of this Court of 27 January 1997, respondent asserted that he had been "continuously keeping abreast of legal and jurisprudential development [sic] in the law" since he passed the 1955 Bar Examinations; and that he issued the two challenged orders "only after due appreciation of prevailing jurisprudence on the matter," citing authorities in support thereof. He thus prayed for dismissal of this case, arguing that to warrant a finding of ignorance of law and abuse of authority, the error must be "so gross and patent as to produce an inference of ignorance or bad faith or that the judge knowingly rendered an unjust decision."[14] He emphasized, likewise, that the error had to be "so grave and on so fundamental a point as to warrant condemnation of the judge as patently ignorant or negligent;"[15] "otherwise, to hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that he has erred, would be nothing short of harassment and that would be intolerable."[16]

Respondent further alleged that he earned complainant's ire after denying the latter's Motion for the Suspension of Barangay Chairman Maghirang, which was filed only after Maghirang was re-elected in 1994; and that complainant made inconsistent claims, concretely, while in his letter of 4 September 1995 requesting respondent to inhibit from the case, complainant declared that he believed in respondent's integrity, competence and dignity, after he denied the request, complainant branded respondent as a "judge of poor caliber and understanding of the law, very incompetent and has no place in Court of Justice."

Finally, respondent Judge avowed that he would not dare soil his judicial robe at this time, for he had only three (3) years and nine (9) months more before reaching the compulsory age of retirement of seventy (70); and that for the last 25 years as municipal judge in the seven (7) towns of Laguna and as presiding judge of the MTCC, San Pablo City, he had maintained his integrity.

In compliance with the Court's resolution of 9 March 1998, the parties, by way of separate letters, informed the Court that they agreed to have this case decided on the basis of the pleadings already filed, with respondent explicitly specifying that only the complaint and the comment thereon be considered.

The Office of the Court Administrator (OCA) recommends that this Court hold respondent liable for ignorance of the law and that he be reprimanded with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely. In support thereof, the OCA makes the following findings and conclusions:

> The claim of respondent Judge that a local official who is criminally charged can be preventively suspended only if there is an administrative case filed against him is without basis. Section 13 of RA 3019 (Anti-Graft and Corrupt Practices Act) states that:
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> "*Suspension and loss of benefits* – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as

a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office."

It is well settled that Section 13 of RA 3019 makes it mandatory for the Sandiganbayan (or the Court) to suspend any public officer against whom a valid information charging violation of this law, Book II, Title 7 of the RPC, or any offense involving fraud upon government or public funds or property is filed in court. The court trying a case has neither discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office. All that is required is for the court to make a finding that the accused stands charged under a valid information for any of the above-described crimes for the purpose of granting or denying the sought for suspension. (Bolastig vs. Sandiganbayan, G.R. No. 110503 [August 4, 1994], 235 SCRA 103).

In the same case, the Court held that "as applied to criminal prosecutions under RA 3019, preventive suspension will last for less than ninety (90) days only if the case is decided within that period; otherwise, it will continue for ninety (90) days."

Barangay Chairman Benjamin Maghirang was charged with Unlawful Appointment, punishable under Article 244, Title 7, Book II of the Revised Penal Code. Therefore, it was mandatory on Judge Monzon's part, considering the Motion filed, to order the suspension of Maghirang for a maximum period of ninety (90) days. This, he failed and refused to do.

Judge Monzon's contention denying complainant's Motion for Suspension because "offenses committed during the previous term (is) not a cause for removal during the present term" is untenable. In the case of Rodolfo E. Aguinaldo vs. Hon. Luis Santos and Melvin Vargas, 212 SCRA 768, the Court held that "the rule is that a public official cannot be removed for administrative misconduct committed during a prior term since his re-election to office operates as a condonation of the officer's previous misconduct committed during a prior term, to the extent of cutting off the right to remove him therefor. The foregoing rule, however, finds no application to criminal cases x x x" (Underscoring supplied)

Likewise, it was specifically declared in the case of Ingco vs. Sanchez, G.R. No. L-23220, 18 December 1967, 21 SCRA 1292, that "The ruling, therefore, that 'when the people have elected a man to office it must be assumed that they did this with knowledge of his life and character and that they disregarded or forgave his faults or misconduct if he had been guilty of any' refers only to an action for removal from office and does not apply to a criminal case." (Underscoring ours)

Clearly, even if the alleged unlawful appointment was committed during Maghirang's first term as barangay chairman and the Motion for his suspension was only filed in 1995 during his second term, his re-election