

## FIRST DIVISION

**[ A.M. No. MTJ-12-1804 (Formerly A.M. OCA I.P.I. No. 09-2179-MTJ), July 30, 2012 ]**

**CITY PROSECUTOR ARMANDO P. ABANADO, VS. COMPLAINANT,  
JUDGE ABRAHAM A. BAYONA, PRESIDING JUDGE, MUNICIPAL  
TRIAL COURT IN CITIES, BRANCH 7, BACOLOD CITY,  
RESPONDENT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

The case now before this Court sprang from Criminal Case No. 09-03 16474, entitled *People of the Philippines v. Cresencio Palo, Sr.*<sup>[1]</sup> On March 24, 2009, complainant City Prosecutor Armando P. Abanado filed the Information<sup>[2]</sup> in the Municipal Trial Court in Cities, Bacolod City, which was eventually raffled to Branch 7 thereof presided by respondent Judge Abraham A. Bayona.

On April 13, 2009, respondent issued the following order in Criminal Case No. 09-03-16474 in connection with the issuance of a warrant of arrest against the accused therein:

Pursuant to [Section] 6, paragraph (a) in relation to [paragraph] b, Rule 112 of the Revised Rules of Criminal Procedure, the Office of the City Prosecutor of Bacolod City is hereby ordered to present additional evidence, relevant records and documents to enable this Court to evaluate and determine the existence of probable cause, to wit:

1. Copy of the Memorandum of Preliminary Investigation;
2. Resolution of the Investigating Prosecutor on Record, Prosecutor Dennis S. Jarder [Jarder Resolution];
3. Memorandum of the transfer of case assignment from designated Investigating Prosecutor to the City Prosecutor; [and]
4. Exhibit to the Court, the copies of all documents submitted by the complainant and the respondents [therein] for comparison, authentication and completeness of the photocopies attached to the information.

Compliance is required within five (5) days from receipt of this Order.<sup>[3]</sup>

On April 29, 2009, the Office of the City Prosecutor submitted a copy of the Memorandum of Preliminary Investigation and informed respondent that the documents submitted by the parties for preliminary investigation were already

appended to the complaint, thus, taking care of items 1, 2, and 4 required by the April 13, 2009 Order.

With respect to item 3 thereof, complainant, in a letter also dated April 29, 2009, explained that there was no memorandum of transfer of the case from the investigating prosecutor, Assistant City Prosecutor (ACP) Dennis S. Jarder, to him.<sup>[4]</sup> In his aforementioned letter, complainant discussed that the case was initially handled by ACP Jarder who found no probable cause against Cresencio Palo, Sr., accused in Criminal Case No. 09-03-16474. However, complainant, upon review pursuant to Section 4, Rule 112 of the Revised Rules of Criminal Procedure,<sup>[5]</sup> found otherwise; that is, there was probable cause against Palo. Thus, complainant disapproved ACP Jarder's Resolution and filed the Information in court.<sup>[6]</sup>

Respondent was nonetheless dissatisfied with the explanation of the Office of the City Prosecutor. In an Order dated May 5, 2009,<sup>[7]</sup> respondent stated that the Jarder Resolution (dismissing the complaint) was part and parcel of the official records of the case and, for this reason, must form part of the records of the preliminary investigation. He further stated that because there was a conflict between Jarder's and complainant's resolutions, those documents were necessary in the evaluation and appreciation of the evidence to establish probable cause for the issuance of a warrant of arrest against Palo.

WHEREFORE, in view of the foregoing premises, [complainant] is hereby ordered to complete the records of this case by producing in Court this official and public document (Resolution of the Investigating Prosecutor Dennis S. Jarder), required by the Revised Rules of Criminal Procedure, Rules of Court. Compliance is required within five (5) days from receipt hereof. Fail not under the pain of Contempt.<sup>[8]</sup>

On May 11, 2009, in view of the foregoing order, the Office of the City Prosecutor again sent a letter<sup>[9]</sup> explaining the impossibility of submitting the Jarder Resolution to the court. The letter stated that the Jarder Resolution was no longer part of the records of the case as it was disapproved by complainant and it attached a letter of Chief State Prosecutor Jovencito Zuño which reads:

This refers to your letter dated April 18, 2008. For your information, all resolutions prepared by an Investigating Prosecutor after preliminary investigation shall form part of the record of the case. But if they have been disapproved by the Provincial/City Prosecutor, the same shall not be released to the parties and/or their counsels. Thus, only resolutions approved by the Provincial/City Prosecutor for promulgation and release to the parties shall be made known to the parties and/or their counsel.  
<sup>[10]</sup>

Respondent did not accept the explanations made by the Office of the City Prosecutor and insisted instead that the Jarder Resolution should form part of the records of the case. Thus, in an Order<sup>[11]</sup> dated May 14, 2009, he required complainant to explain within five days from the receipt thereof why he should not

be cited for contempt under Section 3, Rule 71 of the Rules of Court.<sup>[12]</sup>

Complainant received the aforementioned order on May 15, 2009 and requested for a ten-day extension to comply with it.<sup>[13]</sup>

In an Order<sup>[14]</sup> dated May 19, 2009, respondent denied the request of a ten-day extension and set the hearing for the contempt charges on May 26, 2009. He likewise ordered the Clerk of Court to issue a *subpoena duces tecum ad testificandum* to ACP Jarder directing him to testify on the existence of his resolution dismissing the case against Palo and to Office of the City Prosecutor's Records Officer Myrna Vañegas to bring the entire record of the preliminary investigation of the Palo case.

Aggrieved, complainant immediately filed a motion for inhibition<sup>[15]</sup> against respondent on May 20, 2009 claiming:

4. That [Complainant] is now in a quandary because despite the fact that the production of the disapproved resolution is not required under Circular Resolution No. 12 for purposes of issuance of warrant of arrest[,] the Court is very much interested in its production and adding insult to injury in foisting to cite in contempt the City Prosecutor for its non-production.

5. That the issuance of said order is capricious and whimsical and issued with grave abuse of discretion. Because as it appears now, the presiding judge is very much interested in the outcome of this case, thereby showing bias and prejudice against the prosecution.<sup>[16]</sup>

Complainant likewise filed a petition for *certiorari* with a prayer for the issuance of a temporary restraining order (TRO) to restrain respondent from proceeding<sup>[17]</sup> with the May 26, 2009 hearing of the contempt proceedings. Complainant's prayer for a TRO was granted in an Order dated May 25, 2009 by Presiding Judge Pepito B. Gellada of the Regional Trial Court, Branch 53, Bacolod City.

In an Order<sup>[18]</sup> dated June 15, 2009, Judge Gellada granted the petition for *certiorari* (Gellada Order) holding that:

[W]hen a city or provincial prosecutor reverses the investigating assisting city or provincial prosecutor, the resolution finding probable cause replaces the recommendation of the investigating prosecutor recommending the dismissal of the case. The result would be that the resolution of dismissal no longer forms an integral part of the records of the case. It is no longer required that the complaint or entire records of the case during the preliminary investigation be submitted to and be examined by the judge.

The rationale behind this practice is that the rules do not intend to unduly burden trial judges by requiring them to go over the complete records of

the cases all the time for the purpose of determining probable cause for the sole purpose of issuing a warrant of arrest against the accused. **"What is required, rather, is that the judge must have sufficient supporting documents** (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, **upon which to verify the findings of the prosecutor as to the existence of probable cause.** x x x.<sup>[19]</sup> (Emphases supplied.)

The records thereafter make no mention of what happened in Criminal Case No. 09-03-16474.

On July 10, 2009, complainant executed the present administrative complaint and the same was received by the Office of the Court Administrator (OCA) on August 20, 2009.<sup>[20]</sup> Complainant alleged therein that respondent was guilty of gross ignorance of the law or procedure,<sup>[21]</sup> gross misconduct,<sup>[22]</sup> and violation of Supreme Court Circular No. 12 dated June 30, 1987.<sup>[23]</sup> He essentially asserted that respondent unduly burdened himself by obsessing over the production of the records of the preliminary investigation, especially the Jarder Resolution.

Respondent, in his Comment with Counter-Complaint for Disbarment of Prosecutor Abanado,<sup>[24]</sup> essentially reiterated the importance of the Jarder Resolution in deciding whether to issue a warrant of arrest in Criminal Case No. 09-03-16474. He stated that the document was "material and relevant in the proper conduct of preliminary investigation and the neutral, objective and circumspect appreciation of the Judge of the evidence x x x for a proper and just determination whether probable cause exist[s] or not for [the] possible issuance of a warrant of arrest."<sup>[25]</sup> As for respondent's countercharge, he claimed complainant should be disbarred for (a) filing a malicious and unfounded administrative complaint; (b) disrespect and disobedience to judicial authority; (c) violation of the sanctity of public records; (d) infidelity in the custody of documents; and (e) misconduct and insubordination.<sup>[26]</sup>

In a Reply<sup>[27]</sup> dated October 8, 2009, complainant vehemently denied respondent's charges against him and claimed that they were merely meant to discourage him from pursuing his just and valid administrative complaint.

On February 2, 2011, the OCA submitted its report and recommendation.<sup>[28]</sup> It noted the June 15, 2009 Gellada Order which held that the resolution of the city or provincial prosecutor finding probable cause replaces the recommendation of the investigating prosecutor. In such case, the resolution recommending the dismissal is superseded, and no longer forms an integral part of the records of the case and it need not be annexed to the information filed in court. Thus, the OCA held that complainant cannot be held guilty of contempt. Nevertheless, because there was no showing that respondent was motivated by bad faith and settled is the rule that the acts of a judge in his judicial capacity are not subject to the disciplinary action, it recommended that:

(a) The administrative complaint against [respondent] be **REDOCKETED** as a regular administrative case; and,

(b) [Respondent] be **REPRIMANDED** with **STERN WARNING** that a repetition of the same or similar offenses will be dealt with more severely.<sup>[29]</sup>

We adopt the factual findings of the OCA but find reason not to impose the recommended penalty of reprimand on respondent.

We are tasked to determine whether respondent was administratively liable for gross ignorance of the law, gross misconduct and violation of Supreme Court Circular No. 12 dated June 30, 1987 for requiring the Office of the City Prosecutor to submit the Jarder Resolution to the court despite the reversal thereof.

The conduct of a preliminary investigation is primarily an executive function.<sup>[30]</sup> Thus, the courts must consider the rules of procedure of the Department of Justice in conducting preliminary investigations whenever the actions of a public prosecutor is put in question. An examination of the 2008 Revised Manual for Prosecutors of the Department of Justice-National Prosecution Service<sup>[31]</sup> (DOJ-NPS Manual), therefore, is necessary.

The pertinent provisions of the DOJ-NPS Manual are as follows:

#### J. PREPARATION OF THE RESOLUTION

##### 1. When There is Lack of Probable Cause

**If the investigating prosecutor does not find sufficient basis for the prosecution of the respondent, he shall prepare the resolution recommending the dismissal of the complaint.**

x x x x

##### 3. Form of the Resolution and Number of Copies

The resolution shall be written in the official language, personally and directly prepared and signed by the investigating prosecutor. It shall be prepared in as many copies as there are parties, plus five (5) additional copies.

x x x x

e. Contents of the Body of the Resolution In general, the body of [the] resolution should contain:

1. a brief summary of the facts of the case;
2. a concise statement of the issues involved;
3. applicable laws and jurisprudence; and
4. the findings, including an enumeration of all the documentary evidence submitted by the parties and recommendations of the investigating prosecutor.