596 Phil. 405

THIRD DIVISION

[A.M. No. MTJ-09-1729 (Formerly OCA I.P.I. No. 07-1910-MTJ), January 20, 2009]

NORYN S. TAN, PETITIONER, VS. JUDGE MARIA CLARITA CASUGA-TABIN, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 4, BAGUIO CITY, RESPONDENT.

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Noryn S. Tan (complainant) filed a Complaint dated April 2, 2007 against Judge Maria Clarita Casuga-Tabin (respondent) of the Municipal Trial Court in Cities (MTCC), Branch 4, Baguio City for denial of due process relative to Criminal Case No. 118628.

Complainant avers: On November 9, 2006, the Philippine National Police (PNP) Quezon City Police District (QCPD) served her a warrant of arrest dated October 13, 2006, issued by the MTCC Baguio City, Branch 4, presided by respondent, relative to Criminal Case No. 118628 for alleged violation of *Batas Pambansa Blg*. 22. It was only then that she learned for the first time that a criminal case was filed against her before the court. She was detained at the Quezon City Hall Complex Police Office and had to post bail of P1,000.00 before the Office of the Executive Judge of the Regional Trial Court (RTC) of Quezon City for her temporary release. Upon verification, she learned that respondent issued on August 8, 2006 an Order directing her to appear before the court on October 10, 2006 for arraignment. It was sent by mail to PNP Quezon City for service to her. However, she did not receive any copy of the Order and up to the present has not seen the same; hence, she was not able to attend her arraignment. She also found out that there was no proof of service of the Order or any notice to her of the arraignment. This notwithstanding, respondent issued a warrant for her arrest. Complainant alleges that she was deeply aggrieved and embarrassed by the issuance of the warrant for her arrest despite the fact that she was never notified of her arraignment. Complainant prayed that the appropriate investigation be conducted as to the undue issuance of a warrant for her arrest.[1]

In her Comment[2] dated July 5, 2007, respondent answered: She issued the warrant of arrest because when the case was called for appearance, the complainant, as accused therein, failed to appear. Prior to the issuance of the warrant of arrest, her staff sent by registered mail the court's Order dated August 8, 2006 addressed to complainant "through the Chief of Police, PNP, 1104, Quezon City" directing complainant to appear on October 10, 2006 at 8:30 a.m. for the arraignment and preliminary conference in Criminal Case No. 118628, as proven by Registry Receipt No. 0310. It is true that the return on the court's Order dated August 8, 2006 had not yet been made by the QC Police on or before October 10, 2006. Nonetheless, she issued the warrant of arrest in good faith and upon the

following grounds: (a) under Sec. 3 of Rule 131[3] of the Rules of Court, the court was entitled to presume that on October 10, 2006, after the lapse of a little over two months, official duty had been regularly performed and a letter duly directed and mailed had been received in the regular course of mail; and (b) Sec. 12 of the 1983 Rule on Summary Procedure in Special Cases provides that bail may be required where the accused does not reside in the place where the violation of the law or ordinance was committed. The warrant of arrest she issued was meant to implement this provision, which was not repealed by the 1991 Revised Rule on Summary Procedure, since complainant is a resident of Quezon City and not of Baguio City. If her interpretation was erroneous, she (respondent) believes that an administrative sanction for such error would be harsh and unsympathetic. She has nothing personal against complainant and did not want to embarrass or humiliate her. She issued the warrant in the honest belief that her act was in compliance with the rules. She prays that the case against her be dismissed and that a ruling on the interpretation of Secs. 10 & 12, of the 1983 Rule on Summary Procedure in Special Cases, in relation to Sec. 16 of the 1991 Revised Rule on Summary Procedure be made for the guidance of the bench and bar.[4]

The OCA, in its agenda report dated September 28, 2007, recommended that the case be dismissed for lack of merit. It held: Prior to the filing of the information, a preliminary investigation was conducted by the provincial prosecutor resulting in the Resolution dated July 11, 2006 recommending the filing of the case; it was incredulous for complainant to claim that she came to learn for the first time of the filing of the criminal case when the warrant of arrest was served on her; furthermore, there was already a complete service of notice as contemplated in Sec. 10, Rule 13[5] of the Rules of Court; hence the requirement of notice was fully satisfied by the service of the Order dated August 8, 2006 and the completion of the service thereof.[6]

Adopting the recommendation of the OCA, the Court on November 12, 2007 issued a Resolution dismissing the case for lack of merit.[7]

Complainant filed a Motion for Reconsideration dated January 8, 2008 alleging: The issue in this case was not whether complainant was aware of the criminal complaint against her, but whether the issuance of a warrant of arrest against her despite the absence of notice should be administratively dealt with; complainant was never notified of the arraignment; thus, she was not able to attend the same; respondent admitted in her Comment that no return had yet been made on or before October 10, 2006, the date respondent ordered the warrant to be issued; her explanation of good faith was therefore unjustifiable; neither could respondent invoke the presumption of regularity of performance of official duty, since the complainant did not actually receive any notice; respondent in an Order dated March 14, 2007 admitted that since she did not usually wear eyeglasses during hearings, she thought that the acknowledgment receipt at the back of the Order referred to the copy sent to complainant; later scrutiny, however, showed that it pertained to the one sent to the prosecutor's office; Section 10, Rule 13 of the Rules of Court did not apply to the instant case; the Order was addressed and sent to PNP Quezon City; assuming that the Order was properly served on the PNP, it was not equivalent to a service on complainant; there was no actual delivery of the Order to the complainant; hence, there was no personal service; neither was it served by ordinary mail or by registered mail; thus, the rule on completeness of service had

not been satisfied; complainant was not aware of and therefore did not attend the preliminary investigation of her case; no proof can be shown that she was ever notified of the said preliminary investigation, much less of the filing of the same.[8]

In a Resolution dated April 16, 2008, the Court required respondent to Comment on complainant's Motion for Reconsideration.[9]

Complainant filed a Comment stating: Complainant's motion did not raise any new issue or ground that would merit the reconsideration of the Court's November 12, 2007 Resolution; complainant failed to rebut the presumption that she was notified of the scheduled arraignment; what complainant propounded was a mere self-serving denial that she never received the subpoena intended for her; there was no explanation why she would be able to receive a warrant of arrest; which was coursed in the same manner as the subpoena, in a little less than a month, but allegedly to receive the subpoena in almost two months; if complainant's assertion was to be believed, the effect would be to paralyze the operation of courts in the provinces that had to inevitably rely on the police resources of Metro Manila; arraignments could not proceed and trials could not go on; it was reasonable to follow as a rule that once a pleading or any other official document was received in the ordinary course of sending them, it must be presumed that others of the same nature were also delivered to the named addressees; to believe otherwise would be to delay justice for those residing outside Metro Manila.[10]

The Court finds the Motion for Reconsideration to be impressed with merit.

Whenever a criminal case falls under the Summary Procedure, the general rule is that the court shall *not* order the arrest of the accused, *unless* the accused fails to appear whenever required.[11] This is clearly provided in Section 16 of the 1991 Revised Rule on Summary Procedure which states:

> Sec. 16. *Arrest of accused*. - **The court shall not order the arrest of the accused except for failure to appear whenever required.** Release of the person arrested shall either be in bail or on recognizance by a responsible citizen acceptable to the court. (Emphasis supplied)

In this case, respondent claims that the issuance of a warrant for the arrest of complainant was justified, since complainant failed to appear during the arraignment in spite of an order requiring her to do so. Respondent admits, however, that a copy of the Order dated August 8, 2006, was sent to complainant "*through the Chief of Police, PNP, 1104, Quezon City*."

While it is true that the Rules of Court provides for presumptions, one of which is that official duty has been regularly performed, such presumption should not be the sole basis of a magistrate in concluding that a person called to court has failed to appear as required, which in turn justifies the issuance of a warrant for her arrest, when such notice was not actually addressed to her residence but to the police in her city. So basic and fundamental is a person's right to liberty that it should not be taken lightly or brushed aside with the presumption that the police through which the notice had been sent, actually served the same on complainant whose address was not even specified.

Respondent further admitted in her Comment dated July 5, 2007 that when she