

SECOND DIVISION

[**A.M. No. MTJ-08-1715 [Formerly A.M. OCA IPI No. 08-2037-MTJ], March 19, 2009**]

RODOLFO R. MAGO, COMPLAINANT, VS. JUDGE AUREA G. PEÑALOSA-FERMO, MTC, LABO, CAMARINES NORTE, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Rodolfo R. Mago (complainant) filed before the Municipal Trial Court (MTC) of Labo, Camarines Norte a complaint for grave coercion against Sheriff Alex Rodolfo Angeles (of the Department of Agrarian Reform Adjudication Board [DARAB]), *et al.* The case was docketed as Criminal Case No. 04-7800.

Sheriff Angeles filed a counter-charge for grave threats against complainant and his sons, docketed as Criminal Case No. 04-7811.

Alleging that Presiding Judge of the MTC Labo, Camarines Sur Judge Aurea G. Peñalosa-Fermo (respondent) committed gross ignorance of the law and bias in the disposition of his complaint and of the counter-charge against him, complainant filed the present administrative complaint, the details of which were summarized by the Office of the Court Administrator (OCA) as follows:^[1]

Mr. Mago claims that on April 21, 2004 he filed a complaint for Grave Coercion against Department of Agrarian Reform Adjudication Board (DARAB for brevity) Sheriff Alex Roberto Angeles which was docketed as **Criminal Case No. 04-7800**. However, instead of summoning the accused for a "Preliminary Investigation", he received a complaint charging him and his two (2) sons with Grave Threats [which was docketed as **Criminal Case No. 04-7811**]. He stresses the complaint against him as purely fabricated. He states that the complainant in the said case was not DARAB Sheriff Angeles. He avers that the affidavits of the witnesses in the said case could not be found in the records of the Municipal Trial Court (MTC). Complainant further declares that on July 20, 2004, he received a subpoena to attend the preliminary investigation of Criminal Case No. 04-7811. In compliance, he and his witnesses attended, and even without the assistance of counsel, they were examined through a prepared set of questions handed to them by the stenographer. The respondent judge was not present then. The complainant also states that right after the preliminary investigation, he was immediately arrested and was imprisoned for three (3) days. Thereafter, he was released after he posted bail in the amount of Php12,000 pesos.

Complainant also alleges that he filed a Petition for *Certiorari, Mandamus*, Prohibition with Application for Preliminary Injunction and Ex-Parte Motion for Temporary Restraining Order questioning the order of respondent judge in denying his omnibus motion to quash the information, suppress evidence and produce, inspect and copy documentary evidence. He adds that despite the filing of this petition, the respondent judge continued to direct him to appear at the pre-trial/preliminary conference. He likewise avers that his arraignment was set beyond the period allowed by the Rules of Court. He also laments that he could not locate his lawyer, Atty. Lamberto Bonifacio, Jr. Finally, he alleges that the respondent judge had been biased when hearing his case.^[2] (Italics in the original; emphasis an underscoring supplied)

By 2nd Indorsement dated July 31, 2007,^[3] respondent gave her side of the case as follows:

Contrary to complainant's allegation, the complaint in Criminal Case No. 04-7811 (for grave threats), and the affidavits of the therein complainant-sheriff's witnesses were attached to the record.^[4]

Admitting complainant's allegation that the court stenographer examined complainant and his witnesses during the preliminary investigation of the grave threats complaint against him with the use of prepared written set of questions, respondent explains as follows:

What [complainant] claimed in his Letter-Complaint that the Court Stenographer has a prepared sheet of questions during the preliminary examination is **true** because after a complaint is filed, the undersigned prepares her questions for preliminary examination based on the affidavits of the complaining witnesses and the counter affidavits of the accused. This is done **to make it easy for the Stenographers to take/print the transcript of the proceedings.** *Some witnesses even ask to read/study the question and request that they write down their answers to the questions for the Stenographers to finalize.* Also, this is convenient when more than one preliminary examination is scheduled for the day. This procedure makes it easier for the Stenographers and the witnesses, too, considering the cramped office space.

After the witnesses are briefed, **the [s]tenographers take over since the prepared sheets are given to them so they could propound the questions and the answers are typed directly.** x x x^[5]
(Emphasis, italics and underscoring supplied)

Denying complainant's allegation that he was arrested within the court premises on July 20, 2004 or right after the conduct of the preliminary examination conducted in the grave threats complaint against him, respondent alleges that the preliminary examination was conducted at 9:00 o'clock in the morning of July 19, 2004; that she issued an Order^[6] the following day, July 20, 2004, finding probable cause and directing the issuance of a warrant of arrest^[7] against complainant which the warrant officer received at 4:40 p.m. on even date; and that complainant was arrested on July 21, 2004 at the Poblacion, Labo, Camarines Norte, as shown by the

Warrant Officer's Return of Service.^[8]

Admitting that there was delay in scheduling the arraignment of complainant after his arrest, respondent surmises that the Clerk of Court or the clerk-in-charge might have overlooked the Return of Service of the warrant officer. Respondent states, however, that when the arraignment was scheduled, complainant's counsel opposed the same and filed an Omnibus Motion which resulted in the repeated resetting of the arraignment. Respondent adds that after complainant was arraigned on June 6, 2006, the preliminary conference/pre-trial was set but was not terminated due to the absence of complainant or his counsel.^[9]

In fact, respondent goes on to allege that in complainant's attempt to block his arraignment and to quash the Information against him, he filed a Petition for *Certiorari, Mandamus, Prohibition* with Application for Mandatory Injunction and *Ex-Parte* Motion for Temporary Restraining Order with the Regional Trial Court of Labo which was denied for lack of merit. ^[10]

On the allegation of bias on her part, respondent claims that until the criminal complaints were filed, she did not know any of the parties.

By June 18, 2008 Report,^[11] the OCA came up with the following Evaluation:

x x x x

. . . [W]e hold [respondent] administratively liable for her **unfamiliarity with the basic rules on preliminary investigation**. There was irregularity during the preliminary investigation when the respondent judge allowed the stenographers to handle the latter part of the proceedings.

x x x x

. . . [R]espondent admitted that after the complaint was filed, she prepared a set of questions based on the affidavits of the complaining witnesses and counter affidavits of the accused. She further added that during the preliminary investigation and after briefing the accused and his witnesses, the stenographers took charge of the proceedings. Hence, the respondent judge **violated** the rules on preliminary investigation. Respondent should not have allowed her stenographer to handle the latter part of the proceedings even if she only wanted to expedite the proceedings and it was more convenient. Respondent judge should have personally taken charge of the entire proceedings since **the power to conduct preliminary investigations vests only on her and not on the stenographer.**

x x x x^[12] (Emphasis and underscoring supplied)

Finding respondent guilty of gross ignorance of the law or procedure, the OCA recommended that respondent be FINED in the amount of P20,000 in this wise:

[W]e deem it proper to recommend the imposition upon the respondent judge of a penalty of fine in the amount of P20,000[,] this being her first