

EN BANC

[A.M. No. P-04-1830 [Formerly A.M. No. 04-6-151-MCTC], June 04, 2009]

**OFFICE OF THE COURT ADMINISTRATOR, PETITIONER, VS.
SYLVIA CANQUE, CLERK OF COURT, 12TH MCTC, MOALBOAL-
BADIAN-ALCANTARA-ALEGRIA, CEBU, RESPONDENT.**

DECISION

PER CURIAM:

The instant case stemmed from the Investigation Report of the National Bureau of Investigation (NBI)-Region VII on the entrapment operation on Sylvia R. Canque, Clerk of Court, 12th Municipal Circuit Trial Court (MCTC), Moalboal-Badian-Alcantara-Alegria, Cebu.

The Investigation Report showed that on June 1, 2004, Marissa Y. Ypanto of Barangay Polo, Alcantara, Cebu filed a letter-complaint before the NBI alleging that Canque asked from her the amount of Forty Thousand (P40,000.00) Pesos in exchange for the release of the former's common-law husband, Jovencio Patoc, and the dismissal of his criminal cases in court. Patoc was charged with violation of Republic Act No. 9165 before the *saim gula* of Judge Victor R. Teves of the said court.

The NBI operatives conducted an entrapment operation on June 3, 2004 at about 9:30 A.M. in the sala of Judge Teves. They arrested Canque after she received the amount of P40,000.00, previously marked with invisible ink and dusted with fluorescent powder, from Ypanto in the presence of NBI Investigator Jedidah S. Hife. Canque was brought to the Forensic Chemistry Section of the NBI for laboratory examination. Forensic Chemist Rommel D. Paglinawan, in his Physics Report,^[1] found that the right and left hands of Canque were positive for the presence of fluorescent powder.

The NBI report further stated that prior to the entrapment, Patoc's mother had already given the amount of Twenty Thousand (P20,000.00) Pesos to Canque in the presence of Ypanto for the dismissal of Patoc's first case for possession of "shabu" on November 30, 2003. The case remains pending to date.

In a letter dated June 3, 2004, Atty. Reynaldo O. Esmeralda, Acting Regional Director, NBI-Region VII, endorsed to the Deputy Ombudsman for the Visayas the case of Canque for immediate inquest. Thereafter, Informations for direct bribery and violation of Sec. 3 (b) of Republic Act No. 3019, as amended, were filed in the Regional Trial Court (RTC) of Barili, Cebu and were docketed as Criminal Case Nos. CEB-BRL-1058 and CEB-BRL-1057, respectively.

In November 2003, Auditors from Region VII, Cebu City, conducted the periodic

audit on the cash and accounts of accountable officers of the provinces of Cebu, Bohol and Negros Oriental. After the audit of the cash and accounts of Canque, the Auditors found that she had a cash shortage of P304,985.00. A letter of demand^[2] was sent to her to produce the missing funds and to submit a written explanation within seventy-two (72) hours why the shortage occurred.

On August 3, 2004, the office of the Cluster Director, Commission on Audit, Quezon City received the initial report on the result of the examination of the cash and accounts of Canque.^[3] Attached to said report were the chronological statements on the events that transpired in the course of the audit submitted by Ma. Violeta Lucila T. Luta, State Auditor II, Team Leader. On August 6, 2004, the Supervising Auditor forwarded to the Office of the Chief Justice the initial report on the results of the investigation conducted on the cash and accounts of Canque. The initial report stated that Canque had a shortage in her cash collection amounting to P304,985.00 and recommended her immediate relief from her position and any other position involving money or property accountability.^[4]

In a Resolution dated June 29, 2004, the Court treated the NBI entrapment on Canque as an administrative complaint for grave misconduct and directed her to comment thereon. She was immediately placed under suspension until further orders by the Court. The case was referred to a Consultant of the Office of the Court Administrator (OCA) for investigation, report and recommendation.

In her Comment,^[5] Canque claimed that sometime in November 2003, Rebecca Patoc came to her office to inquire about the bail for her son, Jovencio. When she learned from the judge that the bail was P200,000.00, but that it could be reduced to P100,000.00 if there was no objection from the Chief of Police, Rebecca came back two (2) days later with a Motion for Reduction of Bail. After two weeks, Rebecca came with Ypanto. Canque instructed them to proceed to a bonding company in Barili. She alleged that at Shamrock Restaurant, Rebecca gave P20,000.00 as premium payment for the bail bond to a certain Ote Erojo, who in turn delivered to Rebecca a copy of the Release Order, promising to send her the bond undertaking by mail. On December 8, 2003, Jovencio and Ypanto brought the surety bond to Canque at the latter's office.

In May 2004, another case for drug pushing was filed against Jovencio. Canque admits to seeing Ypanto only on two (2) occasions: during the preliminary investigation on May 24 and on May 31 when Ypanto asked her when the ten-day period for the filing of Jovencio's Counter-Affidavit would expire.

Canque further averred that on June 3, 2004, the last day for the filing of the Counter-Affidavit, Ypanto came with a woman who introduced herself as Jovencio's sister who had just arrived from Holland. The woman got an envelope from her bag and handed it to Ypanto. Ypanto tried to give it to Canque, but the latter did not touch it when she saw that it was not the Counter-Affidavit. The woman allegedly got the envelope from Ypanto and tried to place it at the back of the palm of Canque where it lightly touched her skin. The woman then showed her ID and told Canque that she was an NBI agent. Other NBI agents rushed in and arrested Canque.

In a Resolution dated November 9, 2004, the Court, upon the recommendation of the OCA, reassigned the case to the Executive Judge, RTC, Cebu City for

investigation, report and recommendation, considering that all the persons concerned were residents of Cebu City.

Executive Judge Simeon P. Dumdum, Jr. conducted a hearing on October 18, 2005, attended by Canque, NBI agents Gregorio Algozo, Jr., Reynaldo Villordon and Jedidah Hife. The notice sent to Ypanto was returned with the information that she had died.

The Investigation Report^[6] states, *viz.*:

Jedidah S. Hife, a special investigator of the National Bureau of Investigation Central Visayas Regional Office, identified her Affidavit, dated June 3, 2004.

In that Affidavit, Hife declared that on June 3, 2004, at about 9 o'clock in the morning of June 3, 2004, at the office of the Municipal Circuit Trial Court, Moalboal-Badian-Alcantara-Alegria, Cebu, she and other NBI agents arrested Sylvia Canque in an entrapment operation.

She had been instructed to accompany Marissa Ypanto, pretending to be her friend, and to give a pre-arranged signal to other NBI agents at the proper time.

Thus, she and Marissa Ypanto had entered a room inside the courtroom, and there Marissa introduced her to Sylvia Canque as her friend. Marissa had brought with her marked money in the amount of P40,000.00, for which Sylvia had asked from her in exchange for the dismissal of a case for violation of RA 9165 against Jovencio Patoc, and eventually the release of the latter.

Sylvia Canque and Marissa went outside. Hife followed and overheard Sylvia tell Marissa that the money was for the fiscal. Sylvia showed them a Joint Affidavit executed by PO1 Jeremias Geromo and PO3 Estanislao Avenido, the police officers who had arrested Jovencio.

They returned inside the courtroom. Sylvia Canque asked Marissa how much money she had. Marissa said that she was carrying P50,000.00, and gave the envelope to Canque, who wrote P50,000.00 on it. The latter put the envelope inside her bag, and got it out, and put it in again - she seemed undecided, and then she again asked Marissa how much the envelope contained. Marissa suggested that she count the money.

While Sylvia was counting the money, Hife gave the pre-arranged signal. NBI agents Reynaldo Villordon and Michael Angelo Abarico entered the courtroom followed by other agents, accosted Sylvia Canque and recovered from her the marked money amounting to P40,000.00. Thereupon, they put Canque under arrest and informed her of her Constitutional rights.

At the NBI office, laboratory examination found Sylvia Canque positive for fluorescent powder. She was then booked and fingerprinted.

NBI agents Gregorio Y. Algoso, Jr. and Reynaldo C. Villordon identified and confirmed the allegations in the Joint Affidavit which they executed on June 3, 2004.

On June 1, 2004, their office received a letter from a Jonald Ungab, concerning a certain Marissa Ypanto of Brgy. Polo, Alcantara, Cebu, who had complained about Sylvia R. Canque, Clerk of Court of the 12th Municipal Circuit Trial Court of Moalboal-Basian-Alcantara-Alegria, who had asked from her the amount of P40,000.00 in exchange for the release of her common-law husband, Jovencio Patoc, and the dismissal of the case filed against him, which was then being heard in the sala of Judge Victor R. Teves.

In accordance with their plan to entrap Sylvia Canque, Jedidah accompanied Marissa Ypanto, who introduced Jedidah to Sylvia Canque as a friend. Marked money prepared by the Forensic Chemistry Section of the NBI, consisting of six five-hundred-peso bills, in the total amount of P40,000.00, had been given to Ypanto, who was to hand it to Sylvia Canque. When the transaction was done, and Jedidah had given the pre-arranged signal indicating that the money had been received by Sylvia Canque, they immediately went inside the office of Sylvia Canque, introduced themselves and arrested her. They brought Sylvia Canque to the NBI office to be examined for the presence of fluorescent powder on her hands, booked, photographed and fingerprinted.

Villordon added that, being just nearby, he saw Marissa give the money to Sylvia Canque, who counted it. At this point, Jedidah gave the pre-arranged signal, and the agents went inside. His co-agent Michael Albarico announced that they were NBI agents. All of which took Sylvia Canque by surprise.

Physics Report No. 04-P-3306, dated June 3, 2004, of the Forensic Chemistry Section of the National Bureau of Investigation states that the examination conducted on June 3, 2004, at 12:30 p.m. revealed that the left and right hands of Sylvia Canque bore the presence of yellow fluorescent powder.

For her part, Sylvia Canque identified and confirmed the allegations she made in her Comment, dated July 21, 2004, adding nothing to the same.

Still and all, Canque insisted that it was Jedidah who put the envelope on her forearm, and that she did not count the money inside it. In fact, it was NBI Director Esmeralda who counted the money in his office. Until then the envelope was unopened. She denied having written "P50,000.00" on the envelope.

Findings

Canque admitted that an entrapment operation was conducted on her. Laboratory tests found her hands positive for the presence of fluorescent powder. But Canque denied touching the money herself, claiming that it was Jedidah Hife who put the envelope on the back of her palm. But if