

## THIRD DIVISION

**[ A.M. NO. MTJ-06-1658 [FORMERLY OCA IPI NO. 01-1014-MTJ], July 03, 2007 ]**

**MIGUEL E. COLORADO, COMPLAINANT, VS. MUNICIPAL CIRCUIT TRIAL COURT, LAUR, NUEVA ECIJA, RESPONDENT.**

### RESOLUTION

**AUSTRIA-MARTINEZ, J.**

Before us is a sworn letter-complaint<sup>[1]</sup> dated January 31, 2001 of Miguel E. Colorado (complainant) charging Judge Ricardo M. Agapito (respondent), Municipal Circuit Trial Court (MCTC), Laur, Nueva Ecija, with Gross Ignorance of the Law and Grave Abuse of Authority relative to Criminal Case Nos. 3461-G and 3462-G, entitled "*People v. Miguel Colorado*," with Grave Slander and Grave Threats.

Complainant alleges: He is the accused in the aforementioned criminal cases. The cases were directly filed with the court without first passing the Office of the *Barangay* Chairman, although he and private complainants are permanent residents of *Barangay* Bagong Sikat, Gabaldon, Nueva Ecija. Respondent ignored the glaring deficiency in private complainants' filing of the cases without attaching the requisite certifications to file action from the *barangay*. On the date the two cases were filed, respondent immediately issued two warrants for his arrest. He was arrested on a Friday and languished in the municipal jail for two days and two nights. He posted bail and filed a motion to inhibit respondent from hearing the case, but the same was not acted upon. He received an envelope from the court with nothing inside and found out later that the same was supposed to be a notice of hearing; thus, he was ordered arrested in view of his non-appearance in court.

On February 22, 2001, respondent compulsorily retired from the judiciary.

In a 1<sup>st</sup> Indorsement dated June 8, 2001, respondent was directed to file his comment on the complaint. A 1<sup>st</sup> Tracer dated October 17, 2001 was sent to respondent giving him a non-extendible period of five days to file his comment. However, the said tracer was returned unserved due to respondent's retirement from the judiciary. Another Tracer dated July 30, 2002 was sent to respondent in his residential address giving him a chance to file his comment, but none was filed.

Acting on the complaint, the Court, in its Resolution of March 24, 2003, required respondent to manifest whether he was willing to submit the administrative matter against him for resolution without his comment. Respondent failed to comply with the Court Resolution. Thus, in the Resolution of January 26, 2005, the Court ordered respondent to show cause why he should not be disciplinarily dealt with or held in contempt for failure to manifest and to comply with the Resolution of March 24, 2003. Still, respondent failed to comply with the Resolution of January 26, 2005. In the Resolution of August 24, 2005, the Court imposed upon respondent a fine of

P1,000.00 and deemed respondent to have waived the filing of a comment on the complaint.

In the Agenda Report<sup>[2]</sup> dated October 12, 2005, the Office of the Court Administrator (OCA) found respondent guilty as charged and recommended that he be fined in the amount of Twenty Thousand Pesos (P20,000.00) to be deducted from his retirement benefits.

On November 8, 2005, respondent paid the fine of P1,000.00 imposed on him in the Resolution of August 24, 2005 and submitted his Comment on the complaint.

In his Comment<sup>[3]</sup> dated October 31, 2005, respondent denied the allegations contained in the complaint reasoning that he acted in good faith and within the scope of his duties. He further contends: Based on Administrative Circular No. 140-93, the crimes committed by the accused are not within the *Katarungan Pambarangay* Law because the imposable penalty exceeds one year. Both cases are within the original jurisdiction of the court and, finding a probable cause against the accused, the court issued the warrant of arrest. There is no law or circular issued by this Court that a court cannot issue a warrant of arrest on Friday. If the accused was not able to post bail on time, it is not his fault or of the court. The motion for inhibition filed by complainant must be set for hearing. But in spite of several settings to hear the motion, complainant failed to appear. In the hearing of both cases, complainant failed to appear in court; thus, the assistant provincial prosecutor moved for the arrest of the complainant. At the hearing of November 17, 2000 and January 5, 2001, complainant failed to appear in court, and orders of arrest were issued against him, but said orders were reconsidered by the court. In spite of all the orders of the court for the arrest of complainant, none of the orders were implemented. Neither was the accused arrested and detained in jail. And if the complainant received an envelope from the MCTC of Laur without content, complainant should have immediately informed the court of the said circumstance so that proper action may be done on the employee in charge of the mailing of notices.

In the Resolution of March 29, 2006, the Court referred back the instant administrative matter to the OCA for evaluation, report and recommendation.

In a letter<sup>[4]</sup> dated November 21, 2005, respondent requested the Court that his retirement benefits be released subject to the withholding of P20,000.00 pending resolution of the present complaint.

In the Resolution<sup>[5]</sup> of June 28, 2006, the Court granted the partial release of respondent's compulsory retirement benefits and withheld therefrom the amount of P20,000.00 to answer for whatever liability respondent may incur in the present administrative case.

In the Agenda Report dated August 30, 2006, the OCA submitted its evaluation and recommendation, to wit:

The charges against respondent judge are summarized as follows:

1. Gross Ignorance of the law for his failure to remand or dismiss the case in view of the absence of the requisite certificate to file action issued by the Barangay

as a mandatory requirement of the Katarungan Pambarangay Law and the Local Government Code.

2. Grave abuse of authority for the issuance of a warrant of arrest on a Friday to ensure complainant's incarceration for two days.
3. Grave abuse of authority and bias in continuing the hearing of the cases and for failure to act on the motion for inhibition.
4. An intention on the part of respondent to prevent complainant's appearance in court by sending an envelope, with a supposed notice of hearing but with nothing inside.

x x x x

Respondent judge argued that under Administrative Circular No. 14-93 dated August 3, 1993 issued by this Court as Guidelines for the Implementation of the Barangay Conciliation Procedure, based on the Local Government Code of 1991, R.A. 7160, which took effect on January 1, 1992, one of the exceptions to the coverage of the circular is "Offense[s] for which the law prescribes a maximum penalty of imprisonment exceeding one (1) year or a fine over five thousand pesos (P5,000.00)." Considering that the offenses for which accused was charged have corresponding penalties of more than one year there is no need for a certification to file action from the Barangay.

There was likewise no grave abuse of discretion in the issuance of warrant of arrest. The subject criminal cases were within the original jurisdiction of the MTC and after finding probable cause against the accused, respondent issued the questioned warrant of arrest. Respondent pointed out that there is no law or circular issued by the Honorable Court prohibiting the issuance of a warrant of arrest on Friday.

With regard to the charge of grave abuse of discretion relative to the motion for inhibition, respondent submitted that there should be a hearing on the motion before it could be acted upon. But in spite of the several settings of said motion the complainant as accused failed to appear.

Respondent contended that if it were true that complainant received an envelope from the MCTC of Laur, Nueva Ecija, without any contents, he should have immediately informed the court about it so that the proper action could have been done.

Lastly, respondent invited the Court's attention to the fact that complainant was also accused of Grave Slander by Darlito Urbano and Violeta Urbano which case were docketed as Criminal Case No. 3648-G and 3649-G, MCTC Laur-Gabaldon, Nueva Ecija. It is argued that this shows the character of Miguel Colorado.

After careful evaluation of the record of the case, the undersigned finds merit in the neglect of respondent judge to resolve the pending issue of

the motion for inhibition which was not acted upon up to the time of his compulsory retirement from the service.

It should be noted that respondent never gave any valid justification for the delay in the filing of his comment. It seems that he believed that the mere payment of the fine obliterated the charge of contumacious refusal to obey the order of this Court. Respondent's conduct cannot be left unnoticed by the Court. Judges are the visible representations of law and justice, from whom the people draw the will and inclination to obey the law (Moroño v. Lomeda, 316 Phil. 103, July 14, 1995) "How can the respondent judge expect others to respect the law when he himself cannot obey orders as simple as the show-cause resolution?" {Longboan v. Hon. Polig (A.M. No. R-704-RTJ, June 14, 1990, 186 SCRA 557) cited in the case of Bonifacio Guintu v. Judge Aunario L. Lucero, A.M. No. MTJ-93-794, August 23, 1996}.

In a catena of cases this Court has unhesitatingly imposed the penalty of dismissal on those who have persistently failed to comply with orders requiring them either to file comment or to show cause and comply. Respondent's belated filing of his comment cannot cure or obliterate[d] his shortcomings with this Court. The fact remains that he ignored the lawful directive of the Court and in fact offered no valid justification or excuse for it. This Court could have imposed the penalty of dismissal and forfeiture of all of respondent's retirement benefit had it not been for this Court's compassion in allowing him to retire with the mere retention of P20,000.00. Respondent's comment should not have been received in the first place as the same was already considered waived pursuant to the Resolution of the Honorable Court dated 24 August 2005.

**IN VIEW OF THE FOREGOING,** the undersigned respectfully recommends to the Honorable Court that:

1. Judge Ricardo M. Agapito, former judge of MCTC, Laur, Nueva Ecija be found guilty of gross neglect for failure to act on the motion for inhibition filed by accused-complainant and for his failure to promptly comply with the lawful order of Court and not offering a valid excuse therefor and should be **FINED** in the amount of Twenty Thousand Pesos (P20,000); and
2. The withheld amount of Twenty Thousand Pesos (P20,000) shall be considered the payment of the fine.<sup>[6]</sup>

We agree *in toto* with the findings and recommendations of the OCA.

First of all, we deem it necessary to determine the applicability of A.M. No. 03-10-01-SC, a Resolution Prescribing Measures to Protect Members of the Judiciary from Baseless and Unfounded Administrative Complaints, which took effect on November 3, 2003.

Recognizing the proliferation of unfounded or malicious administrative or criminal cases against members of the judiciary for purposes of harassment, we issued said Resolution, which provides: