

## THIRD DIVISION

**[ A.M. NO. MTJ-05-1615 (FORMERLY OCA I.P.I NO. 04-1613-MTJ), February 22, 2006 ]**

**ERLINDA P. VARCAS, COMPLAINANT, VS. JUDGE RAFAEL P. OROLA, JR., MCTC, DAO-IVISAN, CAPIZ, RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

By a verified letter-complaint<sup>[1]</sup> in *Pilipino*, Erlinda P. Varcas (complainant) charges Judge Rafael Orola, Jr. (respondent) of the Municipal Circuit Trial Court (MCTC) of Dao-Ivisan, with station at Dao, Capiz, with gross ignorance of the law or procedure, classified as a serious charge under Section 8, Rule 140, as amended.

The antecedents of the case follow:

Complainant was indicted for direct assault before the sala of respondent. Her arraignment was scheduled on January 6, 2004. In late 2003, however, her counsel filed a Motion for Postponement due to conflict of schedule.

When the case was called on January 6, 2004, respondent noted and granted complainant's counsel's Motion for Postponement and accordingly reset the arraignment to January 16, 2004. Noting, however, the absence of complainant, respondent issued an order<sup>[2]</sup> in open court directing her to explain in writing in 10 days why no warrant for her arrest should be issued "for defying the order of the court."

Complainant appears to have eventually shown up in court on January 6, 2004 during which she was notified of the above-said Order of respondent issued on even date.

On January 16, 2004, complainant was, as scheduled, arraigned. Her compliance with respondent's order of January 6, 2004, which was due on that day, January 16, 2004, appears not to have been taken up during the arraignment, for respondent later issued on the same day, January 16, 2004, an Order<sup>[3]</sup> reading *verbatim*:

During the hearing of January 6, 2004 the accused Erlinda Vargas<sup>[4]</sup> failed to appear in court in spite receipt of notice. She was required to explain in writing why no warrant of arrest shall be issued. No explanation was received by the court. For defying the order of this court she is hereby committed to the BJMP Ivisan, Capiz for two (2) days detention.

The Provincial Prosecutor finding probable cause filed an information against the herein accused for Direct Assault.

In order not to frustrate the ends of justice, let a warrant of arrest issue.  
The bail for her temporary liberty is hereby fixed at P12,000.00.  
(Underscoring supplied)

It appears that complainant got wind of the January 16, 2004 Order of respondent on the same day. She thus posted also on the same day, January 16, 2004, a cash bond of P12,000 before the Municipal Treasurer of Ivisan, Capiz of which she is a resident, and for which she was issued Official Receipt (O.R.) C No. 0944912.

On January 19, 2004, complainant presented the O.R. issued to her by the Municipal Treasurer of Ivisan to the MCTC Clerk of Court, Norman F. Oducado, who refused to accept it, however, as allegedly respondent had instructed him that the cash bond must be deposited with the Clerk of Court who would issue an O.R. therefor, it being a matter of policy that a fiduciary fund receipt should be issued for cash bonds posted. She was advised to return the O.R. to the Municipal Treasurer of Ivisan, Capiz.

The Municipal Treasurer of Ivisan later issued a Certification<sup>[5]</sup> that O.R. No. 0944912 was replaced by O.R. No. 19248652 dated January 19, 2004 [issued by MCTC Clerk of Court Oducado].

By Order of January 20, 2004,<sup>[6]</sup> respondent noted complainant's posting of a cash bond under the O.R. dated January 19, 2004 and approved the same. In the same order, respondent declared that complainant "shall be allowed to enjoy provisional liberty . . ." Yet, complainant was subsequently detained at the Ivisan municipal jail for two days from January 20-22, 2004 in compliance with respondent's Order of January 16, 2004.<sup>[7]</sup>

Hence, the present complaint against respondent, for gross ignorance of the law, for 1) issuing the January 16, 2004 Order faulting her for indirect contempt despite the fact that she had up to 5:00 p.m. of that day to comply with his January 6, 2004 order, thus depriving her of the opportunity to be heard thereon as called for by Section 4 of Rule 71; refusing to sign the order for her to be released on January 19, 2004; and 2) instructing the Clerk of Court not to accept the cash bond she posted at the Office of Ivisan Municipal Treasurer, despite the provision of the Rules of Criminal Procedure that the cash bond of an accused can be deposited with the nearest collector of internal revenue or provincial or municipal treasurer.

To the complaint, respondent proffers the following comments: He issued the January 6, 2004 Order in accordance with Section 4 of Rule 71 of the 1997 Rules of Civil Procedure which allows a court to *motu proprio* initiate proceedings for indirect contempt by an order, in view of complainant's failure to show up for arraignment. Since the last day for complainant to file her written explanation behind her failure to show up on January 6, 1994 fell on January 16, 2004 (a Friday), "[t]o insure prompt attendance of [complainant] during court hearing and in view of the findings of probable cause by the Provincial Prosecution," he issued the questioned January 16, 2004 Order in open court, ordering her detention for two days "for defying" its order.<sup>[8]</sup>

As for the refusal of the Clerk of Court to accept the O.R. covering complainant's

cash bond posted before the Ivisan Municipal Treasurer, respondent denied having advised him to that effect, albeit he proffered that said Clerk's advice for complainant to post the bond in court is in accordance with a requirement that a fiduciary fund receipt should be issued for the posting of bail.

Finally, on his refusal to approve on January 19, 2004 complainant's release, respondent explained that the order of release was presented to him at his residence in Roxas City and not at his official station at Dao, Capiz.

### **OCA's EVALUATION AND RECOMMENDATION**

On evaluation of the case, the OCA found respondent guilty of gross ignorance of the law in this wise:

x x x His hasty order detaining complainant without awaiting her comment and without conducting the necessary hearing is a clear violation of the rules. Respondent judge should be reminded that he should not cut short the proceedings simply because the last day for complainant to file her explanation fell on a Friday or that there was a need to discipline the latter to ensure her prompt attendance in court hearings. Complainant should not be deprived of her liberty without due process of law.

While it may be said that respondent judge was merely exercising the inherent power of the court to punish for contempt, such power should be exercised with due regard to the rights of the contemner and must be exercised on the preservative, not vindictive, and on the corrective, and not retaliatory idea of punishment. The court must exercise the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judge as persons but for the functions that they exercise.

In fine, the rule (Section 3, Rule 71, 1997 Rules of Civil Procedure) violated by respondent judge is so basic that not to know it or to act as if he does not know it constitute gross ignorance of the law which is punishable by a fine or suspension from office without salary and other benefits for more than three (3) [months] but not exceeding six (6) months; or a fine of more than P20,000.00 but not exceeding P40,000.00. Considering that this is the first offense of Judge Orola Jr., a fine of P20,000.00 is commensurate.

As regards the alleged refusal to accept complainant's cash bond, it was erroneous to have required the complainant to return the official receipt to the Municipal Treasurer of Ivisan, Capiz and post the money in court. However, such indiscretion was committed by the Clerk of Court and not respondent judge. Moreover there is no clear showing that respondent judge instructed the Clerk of Court not to accept the official receipt issued by the Municipal Treasurer. Also, respondent judge's refusal to act on complainant's release order and other pertinent papers in his residence is a policy which is left to the discretion of respondent judge. It will be noted however that respondent judge on the following day