

FIRST DIVISION

[A.M. NO. RTJ-06-1969 (FORMERLY OCA IPI NO. 05-2159-RTJ), June 15, 2006]

ATTY. HUGOLINO V. BALAYON, JR., COMPLAINANT, VS. JUDGE OSCAR E. DINOPOL, REGIONAL TRIAL COURT, BRANCH 24, KORONADAL CITY, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

This is an administrative complaint against Judge Oscar E. Dinopol of the Regional Trial Court of Koronadal City, Branch 24, for Gross Ignorance of the Law, relative to his issuance of Search Warrant No. 01-03. The complainant is Atty. Hugolino V. Balayon, Jr., a private practicing lawyer.

Complainant alleged that on 6 January 2003, Filoteo B. Arcallo, a public school teacher, submitted his sworn statement before SPO2 Carlito Lising accusing Tito Cantor of Illegal Possession of Firearms. Based on the said sworn statement, P/S Insp. Virgilio Carreon, Intelligence and Investigation Officer of the South Cotabato Police Provincial Office, filed an application for search warrant against Tito Cantor. On 13 January 2003, respondent Judge issued the search warrant. In the evening of the same day, a team of policemen headed by P/Supt. Fred Juan Bartolome implemented the search warrant. After the search conducted by the raiding team, a written report/information was submitted by P/S Insp. Virgilio Carreon, where it was stated therein that the search was negative, meaning not a single firearm was found inside the house of Tito Cantor.

Claiming that the search warrant was issued in violation of Sections 4 and 5 of Rule 126 of the Rules of Court and A.M. No. 02-1-06-SC,^[1] the instant complaint^[2] was filed.

In his comment^[3] dated 22 March 2005, respondent Judge denied the charge of gross ignorance of the law. He alleged that complainant is not the proper party to file the instant complaint as the aggrieved party in said case should have been Tito Cantor, and not the complainant, who was not authorized by the former to file the complaint in his behalf. Respondent Judge likewise negated the fact that he issued the search warrant based alone on the sworn statement of complainant and the application of P/S Insp. Carreon for the issuance thereof. He maintained that it was only after he made exhaustive clarificatory interviews of Filoteo B. Arcallo in his chambers that the subject search warrant was issued on 13 January 2003. He alleged further that complainant is not privy nor does he have actual knowledge of the implementation of the search warrant in question.

Respondent Judge surmised that the instant complaint was the result of the ill-will and hatred the complainant had against him due to his dismissal, without prejudice,

for nonpayment of docket fees, of the Petition for Issuance of Writ of Possession filed by the same complainant, in behalf of Sta. Teresita Multi-Purpose Cooperative, in another unrelated case.

In his Reply^[4] dated 26 August 2005, complainant emphasized the alleged highly reprehensible attitude of respondent Judge when he requested for an extension of ten days to file his comment without informing complainant. Respondent Judge did not also bother to furnish complainant a copy of his comment when he did finally file one. Moreover, respondent Judge failed to comply with the directives of the Honorable Court Administrator to file his comment within ten days from receipt of the Order granting his request for extension. Complainant believes this constitute additional grounds to warrant respondent Judge's administrative liability.

As to respondent Judge's allegation that complainant had no legal personality to file the instant complaint against him as the complainant is neither the aggrieved party nor a relative of Tito Cantor, complainant counters that whether or not he is a relative of Tito Cantor, he can file this administrative complaint against the respondent Judge. Allegedly, Tito Cantor already filed a criminal complaint against Filoteo Arcallo and P/S Insp. Virgilio Carreon for perjury before the City Court of Koronadal City, on the basis of malicious lies they made in their sworn statements involving the issuance of the search warrant by the respondent Judge.

Additionally, complainant reiterated in his reply respondent Judge's noncompliance with Sections 4 and 5 of Rule 126 of the Rules of Court by not conducting and attaching the written searching questions and answers he made before issuing the search warrant.

On 22 November 2005,^[5] the Office of the Court Administrator (OCA) submitted its recommendation, thus:

Respectfully submitted for the consideration of the Honorable Court is our recommendation that the instant administrative complaint be:

1. RE-DOCKETED as regular administrative matter;
2. That Judge Oscar E. Dinopol of Regional Trial Court, Branch 24, Koronadal City be found GUILTY of Gross Ignorance of the Rules, in which case, he should be meted with a penalty of a FINE in the amount P20,000.00, with a STERN WARNING that a repetition of similar infraction in the future should be dealt with more severely.

We must first resolve the propriety of the filing of the instant administrative complaint by the complainant. Respondent Judge alleged that complainant is not the proper party to file the instant administrative complaint, as he was not the person aggrieved by the issuance of the search warrant nor a relative thereof.

We rule in the negative.

Section 1, Rule 140 of the Rules of Court (as amended by A.M. No. 01-8-10-SC, which took effect on 1 October 2001) provides that:

Section 1. How instituted. - Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the

Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct. (Underscoring supplied)

A careful perusal of the above-cited provision shows that the complainant need not be the person allegedly aggrieved by the actuations of a court officer or employee or someone related thereto. The rule does not mention that the complainant must be the aggrieved party or his relative so as to initiate the prosecution of an administrative case. As correctly observed by the OCA, the above-quoted rule allows the filing by even an anonymous complainant as the rule merely requires that it should be supported by public records of indubitable integrity.

We shall now discuss the liability of respondent Judge in issuing the search warrant without complying with the requirements of the law.

Section 4, Rule 126 of the Rules of Criminal Procedure provides that:

Section 4. *Requisites for issuing search warrant.* - A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. (Underscoring supplied)

Corollarily, Section 5 of the same rule further states that:

Section 5. *Examination of complainant; record.* - The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted. (Underscoring supplied)

The foregoing provisions provides that the judge must, before issuing the warrant, personally examine, under oath or affirmation, the complainant and any witnesses he may produce and take their testimonies in writing, and attach them to the record, in addition to any affidavits presented to him.

Mere affidavits of the complainant and his witnesses are thus not sufficient. The examining Judge has to make searching questions and elicit answers of the complainant and the witnesses he may produce in writing and to attach them to the record. [6]

The searching questions propounded to the applicant of the search warrant and his witnesses must depend to a large extent upon the discretion of the Judge just as long as the answers establish a reasonable ground to believe the commission of a