528 Phil. 953

FIRST DIVISION

[A.M. NO. MTJ-06-1641 (Formerly A.M. OCA IPI No. 05-1756-MTJ), July 27, 2006]

NOTAN LUMBOS, COMPLAINANT, VS. JUDGE MARIE ELLENGRID S.L. BALIGUAT, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 1, GENERAL SANTOS CITY RESPONDENT.

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.

Before us is an administrative complaint[1] dated July 28, 2005 filed by Notan Lumbos (complainant) against Judge Marie Ellengrid S.L. Baliguat (respondent), Municipal Trial Court in Cities (MTCC), Branch 1, General Santos City, for Gross Ignorance of the Law, Grave Abuse of Authority, Dereliction of Duty, Grave Misconduct, Oppression and Disbarment (under Resolution A.M. No. 02-9-02-SC, October 1, 2002).

Complainant alleges that: he is one of the accused in a complaint for arson and robbery in Criminal Cases Nos. 46246 and 46247 filed by P/Insp. Richie Siong Bucol on July 14, 2004 before respondent's sala; instead of dismissing the case for patent lack of jurisdiction, respondent propounded a series of leading questions on the witnesses i.e., Jose Orlando Acharon (Acharon) and Edwin Yagat (Yagat) even without prior application for the issuance of warrant of arrest; with the object of issuing a warrant of arrest against all accused, respondent propounded a series of suggestive rather than searching questions on Acharon, who did not actually witness the alleged crime; the purported eye witness Yagat never categorically named the alleged malefactors and their specific participation in the alleged crimes; respondent merely tried to confirm her preconceived presumption of guilt of all accused via suggestive questions; respondent issued an Order for the issuance of a warrant of arrest against complainant and his co-accused without giving them a fair chance to file their respective counter-affidavits; he with his co-accused, filed two motions dated July 24, 2004 and August 17, 2004, respectively, for purposes of lifting the warrant of arrest and proper referral of subject cases to the Office of the City Prosecutor so they can file their respective counter-affidavits; attached to the motion is an excerpt from the police blotter certifying that on July 11, 2004 at 8:30 in the evening, complainant was in Philippine National Police-Camp Lira, which is approximately 25 kilometers from Bawing, Tambler where the alleged crimes were committed; his presence in Camp Lira was precipitated by the suspicious apprehension of some relatives who were detained in the said camp; on September 1, 2004, the Provincial Office of the National Commission on Indigenous Peoples intervened through a Manifestation dated August 30, 2004, praying for the dismissal of the subject cases stating that Acharon, the complainant in the said cases, has no real right or interest to protect, none of his rights were violated, he (Acharon) is even vulnerable to criminal prosecution under Republic Act No. 947, and, the filing of the subject cases in an effort to restrain the legitimate claimants appears to be a

mockery of the judicial process; respondent issued an Order dated October 26, 2004 holding in abeyance the prayer for the lifting of the warrant of arrest, pending the submission of counter-affidavits within 10 days from receipt of the Order.

In her Comment[2] dated September 9, 2005, respondent avers that: the criminal cases subject of this complaint were filed before the MTCC, General Santos City, for Preliminary Investigation (PI); on July 15, 2004, being the Executive Judge and by virtue of Sections 84 and 86, Republic Act No. 5412,[3] otherwise known as the City Charter of General Santos City, Acharon (the complainant in the said cases) and Yagat (the eye witness to the alleged crimes) were duly examined under oath and through searching questions; finding probable cause, a warrant of arrest was issued against all the accused; the accused were directed to file their counter-affidavits but, instead of doing so, the defense filed a Motion to Correct Caption and to Lift the Warrant of Arrest issued; the first prayer was granted but the resolution of the second motion was held in abeyance until the counter-affidavits of all the accused are submitted; no counter-affidavits were filed so respondent resolved the cases and forwarded its records to the City Prosecutor's Office for the filing of proper Information.

Respondent claims that: the conduct of the PI and the subsequent issuance of the warrant of arrest are well within the authority given in the City Charter which remains valid and enforceable until revoked by the *Sangguniang Panlungsod* of General Santos City; there was no usurpation of authority of an RTC Judge when she issued the assailed warrant of arrest as she has authority to do so under the City Charter; she examined only Acharon and Yagat because they were the witnesses to the alleged crimes and the questions propounded were never leading; there was no grave abuse of discretion when she held in abeyance the resolution of the prayer for the lifting of the warrant of arrest because the primary reason why it was withheld was the complainant's failure to submit a counter-affidavit; she did not personally know Acharon as she did not grow up in General Santos City; there is no conflict that the Rules on Criminal Procedure had undergone amendments but it would be very safe to say that the General Santos City Charter is not yet amended, hence, it still stands; and she believes that she did her duty to her very best in accordance with law and feels strongly offended and harassed by the filing of the instant case.

For her defense, respondent avers that: in clean conscience she conducted the PI and thereafter issued the warrant of arrest in good faith and in accordance with law, jurisprudence and the rules and procedures; as a government employee since 1979, she had maintained a clean reputation; she even sacrificed and left her post as Senior Legal Officer of the Department of Labor and Employment (DOLE), National Capital Region (NCR) in 1990 on the ground that she could not take the corruption around her; she had always kept her impartiality in making her decisions and never looked into the persons behind the party litigants; she rose through the ranks asking no favors from anyone and relied on her own skills, abilities, knowledge of the Constitution, laws, rules, regulations and jurisprudence and most especially her unblemished reputation; and with utmost dignity and head held high, respondent reiterates that she had not violated any of the provisions of the Constitution, or the Lawyers' and Judges' Oath, or any of the provisions of the Code of Judicial Conduct, Code of Professional Responsibility, or Canons of Professional Ethics; and she had observed due process and did not misuse it to defeat the ends of justice.

In its Memorandum[4] dated November 21, 2005, the Office of the Court Administrator (OCA) submitted its evaluation and recommendation, to wit:

> **EVALUATION**: After a careful perusal and consideration of the parties' respective positions and arguments, this Office finds no reasonable ground to hold the respondent administratively liable.
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> Paragraph (5) Section 5 of the 1987 Constitution provides as follows:
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> > Sec. 5. The Supreme Court shall have the following powers:
> >
> > x x x
> >
> > (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, practice and [enforcement of constitutional rights, pleading practice and] procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.
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> Under the City Charter of General Santos City, the city court "may also conduct preliminary investigation for any offense without regard to the limits of punishment and may release or commit and bind over any person charged with such offense to secure his appearance before the proper court". However, considering the Honorable Court's power of supervision over all courts, rules of pleading, practice and procedure in all courts have been promulgated. And as a matter of policy and procedure, criminal cases covered by the Rule and initiated by a complaint is being referred to the City Prosecutor for appropriate action.
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> In the case of Salcedo vs. Nobles-Banz, 134 SCRA 207, the Supreme Court ruled that:
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> > There is no question that under the Olongapo City Charter, the Municipal Trial Court can conduct preliminary investigation of all offenses. That is substantive law. However, pursuant to our constitutional supervision over all Courts, as a matter of policy, we direct the Municipal Trial Court in the City of Olongapo [that] whenever a criminal case covered by the Rule is initiated by complaint, to refer the same to the City Fiscal for the filing of the corresponding Information x x x.
> >
> > x x x
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> > The primary function of courts is to try and decide cases, not to conduct preliminary investigation. Thus, in Section 9 of the Rule on Summary Procedure in Special Cases effective August 1, 1983, the Court provided expressly that "in Metro-Manila

> and chartered cities, (criminal) cases shall be commenced only by information" at the instance of the metropolitan municipal trial court judges themselves who feared that they would be swamped with preliminary investigation which they would have to conduct (instead of cities' fiscals) if criminal complaints were to be directly filed with them. The Court has likewise adopted the same rule and policy in the 1985 Rules on Criminal Procedure effective January 1, 1985 governing the institution of all other offenses that "in Metropolitan Manila and other chartered cities, the complaint may be filed only with the office of the fiscal." (Rule 110, sec.1[b]).

Further, it is worthy to state herein that it is the Public Prosecutor who is given by law "direction and control" of all criminal actions. It is he who is primarily responsible for ascertaining through a preliminary inquiry or proceeding "whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof." Therefore, the preliminary investigation proper is not a judicial function, but an executive function, which is part of the prosecution's job. The assignment of this non-judicial function to judges of inferior courts was dictated by necessity and practical considerations because there are not enough fiscals and prosecutors to investigate crimes in all municipalities all over the country. In the case of Castillo vs. Villaluz, 171 SCRA 39, citing Salta vs. Court Administrator, 143 SCRA 228, the Honorable Court ruled that:

> Whenever there are enough fiscals or prosecutors to conduct preliminary investigation, courts are counseled to leave this job which is essentially executive to them.

It appears that the City of General Santos already has sufficient number of prosecutors who can handle the preliminary investigation of criminal cases. Hence, the same should be referred to them for appropriate action.

It is worth mentioning here that lately, the Honorable Court in A.M. No. 05-8-26-SC dated 30 August 2005 has already withdrawn the power to conduct preliminary investigation from the judges of the first level courts.

Insofar as the issuance of warrant of arrest is concerned, par. (b), Sec. 6, Rule 112 provides:

> Sec. 6. When warrant of arrest may issue. -
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> x x x
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> (b) By the Municipal Trial Court. - When required pursuant to the second paragraph of section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court may be conducted by either the judge or the prosecutor. x x x. When the investigation is conducted by the judge himself, he shall

> follow the procedure provided in Section 3 of this Rule. If his findings and recommendations are affirmed by the provincial or city prosecutor, or by the Ombudsman or his deputy, and the corresponding information is filed, he shall issue a warrant of arrest. However, without waiting for the conclusion of the investigation, the judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody not to frustrate the ends of justice.

Under the above-quoted rule, the power or authority of the investigating judge to issue a warrant of arrest is limited to those instances where there is a necessity of placing him in custody in order not to frustrate the ends of justice. In the case of Mantaring vs. Roman, 254 SCRA 158, the respondent judge was reprimanded for issuing a warrant without any finding that it was necessary to place the accused in immediate custody in order to prevent a frustration of justice. And we quote:

> Moreover, we think it was improper for respondent judge to have issued the warrants of arrest against complainant and his son without any finding that it was necessary to place them in immediate custody in order to prevent a frustration of justice. It is now settled that in issuing warrants of arrest in preliminary investigations, the investigating judge must:
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> (a) have examined in writing and under oath the complainant and his witnesses by searching questions and answers;
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> (b) be satisfied that probable cause exists; and
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> (c) that there is a need to place the respondent under immediate custody in order not to frustrate the ends of justice.

In the instant case, it appears that respondent ordered the issuance of warrants of arrest against the complainant and his co-accused not only because of the existence of probable cause, but because of her finding that it was necessary to place them under immediate custody in order not to frustrate the ends of justice. Pertinent portion of the Order of the court during the preliminary investigation held on 15 July 2004 is hereunder quoted as follows:

> ORDER: For preliminary investigation and request for immediate issuance of warrant of arrest. After a thorough examination of the complaining witness, Jose Orlando Acharon together with the eye-witness Edwin Yagat through searching questions under oath, the undersigned finds that there is reason to believe that the crimes of arson and robbery and there is a need to place in custody the named accused herein in order not to frustrate the ends of justice and also to prevent them from possibly committing the same crime in the other