

THIRD DIVISION

[A.M. NO. MTJ-04-1532, June 27, 2005]

**THELMA ALMONTE, COMPLAINANT, VS. JUDGE FRED A. BIEN,
RESPONDENT.**

R E S O L U T I O N

GARCIA, J.:

In a verified, sworn administrative complaint^[1] directly filed with this Court, herein complainant, Thelma Almonte, charges herein respondent, **Judge Fred A. Bien**, incumbent Acting Presiding Judge of the 8th Municipal Circuit Trial Court (MCTC) of San Jacinto-Monreal, 5th Judicial Region, San Jacinto, Masbate with gross ignorance of the law in connection with respondent's preliminary investigation of Criminal Case No. 4598, a prosecution for robbery filed with respondent's court at the instance of Isauro Lique against the complainant and her husband, Jaime Almonte.

Complainant alleges that after conducting a "semblance of a preliminary investigation" by an *ex-parte* inquiry on Isauro Lique, the respondent judge, in his order of April 24, 2002,^[2] directed the arrest of complainant and her husband and fixed their bail for provisional liberty at P40,000 each.

Complainant avers that respondent judge disregarded the procedure for preliminary investigation, as provided under Section 3(b) and (c), Rule 112, of the Revised Rules of Court. She claims that she and her husband were deprived of their right to due process because they were not given copies of the complaint for robbery, nor were they summoned by the respondent judge to appear before him and present their counter-affidavits and other supporting documents.

On May 20, 2002, complainant, through counsel, filed in Criminal Case No. 4598 a *Motion To Quash Or Cancel The Order Dated April 24, 2004 Directing The Issuance Of The Warrant Of Arrest Of Accused Herein And Fixing The Bail Bond For Their Provisional Liberty And The Warrant Of Arrest Itself*.^[3] However, in his order of June 25, 2002,^[4] the respondent judge denied the motion, relying on the ruling of this Court in *Rolito Go vs. Court of Appeals*^[5] that once an accused posted his bail bond, he thereby waived his right to question any defect in the issuance of the warrant of arrest.

Complainant asserts that the respondent's denial of their aforementioned motion is another manifestation of the latter's ignorance of the rules of procedure, arguing that Section 26, Rule 114 of the Rules of Court provides that admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, provided that he raised them before entering his plea. Not having been arraigned yet, complainant argues that she has all the right to question the validity of the warrants of arrest issued against her and her husband.

In the same administrative complaint, complainant further avers that prior to the filing of the robbery case against her and her husband by Isauro Lique, they had caused the filing against Lique of a criminal case for acts of lasciviousness for molesting their 9-year old daughter, Brenda Almonte, which case is still pending with the Regional Trial Court at Masbate, Branch 48 (Family Court). Complainant asserts that Lique maliciously filed the complaint for robbery in order to compel her and her husband to drop the earlier criminal case for act of lasciviousness they filed against him.

In his COMMENT^[6] dated March 10, 2003, respondent judge wants it placed on record that he is: (1) the Acting Presiding Judge of the MCTC of both San Jacinto and San Fernando, Masbate; (2) the Judge-Designate of some of inhibited cases in the MTCC, Masbate and MCTC of Aroroy, Masbate; and (3) the Presiding Judge of the MCTC of Dimasalang, Masbate, his permanent station.

In the same COMMENT, respondent admits having conducted on April 24, 2002 the preliminary investigation in Criminal Case No. 4598; that after finding the existence of a probable cause, he issued the warrant of arrest against complainant and her husband and fixed a bail bond of P40,000 each for their provisional liberty, as required under the first stage of preliminary investigation; that although no subpoenas were issued to the accused, such an omission was an honest mistake on his part in the performance of his duties, and not due to his ignorance of the law or procedure, adding that he had been extra-careful and diligent in the discharge of his duties, dispensing justice without delay, fear or favor; that in fact, his April 24, 2002 order was even affirmed by the Office of the Provincial Prosecutor, Masbate City which eventually filed an information for Robbery against complainant and her husband before the Regional Trial Court at San Jacinto, Masbate.

As regards his denial of the *Motion To Quash Or Cancel The Order dated April 24, 2002, etc., (supra)* filed by complainant and her husband, thru counsel, in Criminal Case No. 4598, respondent, by way of explanation, reproduced in his COMMENT the full text of his denial Order of June 25, 2002,^[7] to wit:

This is a Motion to Quash or Cancel the Order dated April 24, 2004 Directing the Issuance of the Warrant of Arrest Herein and Fixing the Bail Bond for their Provisional Liberty and the Warrant of Arrest Itself, filed by accused thru counsel Atty. Ruben Joel A. Puertollano in the above-entitled case.

Accused alleged that this Court did not observe the provisions of Sections 3, 5 and 6 (b) of Rule 112 of the Revised Rules on Criminal Procedure, as amended relative to the conduct of the preliminary investigation and before the issuance of a warrant of arrest.

Records of the case would readily show that when this instant motion was filed on May 20, 2002, the Court also received an Order of Release issued by the Hon. Cristobal M. Bailon of the Regional Trial Court, Branch 50, San Jacinto, Masbate commanding the Jailer of the Bureau of Jail Management and Penology, San Jacinto, Masbate to release from custody accused Thelma Almonte for having posted the required bail bond.

In the case of *People vs. Rolito Go*, the Supreme Court held that once an accused has posted his bail bond, he waives his right to question any defect in the issuance of the warrant of arrest. For this reason, the instant Motion to Quash the Warrant of Arrest issued by this Court has now become moot and academic.

As to the allegation that the Court did not observe the provisions in the conduct of the preliminary investigation and the issuance of warrant of arrest, it is worth recalling that basically the preliminary examination has two phases or stages. The first is the preliminary examination. It is here where the Court conducts an ex parte inquiry on the prosecution witnesses based on their sworn statements in the form of searching questions and answers. After this, if the Court believes that there is a probable cause that the crime has been committed and that the accused is probably guilty thereof, then the Court will issue a warrant of arrest in order not to frustrate the ends of justice.

When the accused has already been arrested on the basis of the warrant of arrest issued by the Court, and has been committed for detention, the Court immediately issues a subpoena to the accused requiring him to submit his counter-affidavit and other controverting evidence for the evaluation of the Court. This is the second stage of the preliminary investigation.

It is submitted that the Court has correctly applied the rules on the conduct of the preliminary investigation and the issuance of the warrant of arrest, and it finds no justifiable reason to quash or cancel the order dated April 24, 2002 and the warrant of arrest itself.

WHEREFORE, premises considered, the Court hereby resolves to DENY the instant Motion to Quash or Cancel the Order dated April 24, 2002 and the Warrant of Arrest.

SO ORDERED. (Underscoring by respondent himself).

Respondent judge submits that the aforequoted Order is in accordance with law and with what he honestly believed as correct and proper, and not on his alleged ignorance of the law and procedure, as charged by complainant.

In her Reply to Comment,^[8] complainant expresses the belief that respondent judge issued the warrants of arrest in Criminal Case No. 4598 without giving her and her husband notice and chance to file their counter-affidavits to favor Isauro Lique. Elaborating thereon, complainant asserts that if respondent judge is truly not ignorant of the law, as he claims, then it could well be that his intention in forthwith issuing the warrants is for her and her husband to be immediately arrested and detained, such that if they could not post bail, Lique would have a bargaining leverage for the dropping of the case for acts of lasciviousness then pending against him. Complainant also points out that Lique's complaint for robbery was directly filed by the latter with the Municipal Trial Court of San Jacinto, Masbate without reporting the alleged robbery incident with the local barangay authorities or with the Philippine National Police of San Jacinto, Masbate.

Complainant also contends that respondent judge's argument to the effect that a preliminary investigation has two stages or phases is misplaced. She asserts that respondent judge obviously applied Section 6, Rule 112 of the old Rules on Criminal Procedure which has been already amended by the Revised Rules on Criminal Procedure which took effect on December 1, 2000. She posits that under the new rules, respondent judge cannot take cognizance of the crime of robbery since it is not within the jurisdiction of the MTC or the MCTC, hence improper for him to issue a warrant of arrest without waiting for the conclusion of the preliminary investigation, explaining that only when the offense charged is within the original jurisdiction of the MTC or MCTC that a judge thereof may issue warrant of arrest without waiting for the termination of the preliminary investigation if he finds after 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 in order not to frustrate the ends of justice.

On the basis of its evaluation, the Office of the Court Administrator (OCA) which initially acted on the subject administrative complaint recommended that: (1) the same be re-docketed as a regular administrative matter; (2) respondent judge be fined in the amount of P10,000 for gross ignorance of the law; (3) he be reprimanded in his capacity as a member of the Philippine Bar for violation of the Code of Professional Responsibility and this be reflected in his record at the Office of the Bar Confidant; and (4) respondent judge be sternly warned that repetition of the same or similar act shall be dealt with more severely.

In separate resolutions both dated February 23, 2004,^[9] we redocketed the present case as a regular administrative matter and required both parties to manifest whether they are amenable to submit the case for resolution based on the pleadings filed. In their respective manifestations, complainant and respondent judge expressed their willingness to submit the case based on the pleadings filed, which manifestations were noted by us in our Resolution of July 19, 2004.^[10]

After a thorough examination of the OCA's evaluation report and the records on hand, the Court finds merit in the recommendation of the Court Administrator.

Doubtless, the root of the controversy is respondent judge's unfamiliarity with the rules applicable in cases requiring preliminary investigation.

It is the stance of respondent that there are two stages or phases of preliminary investigation; that he was only in the first or the preliminary examination stage when he issued the warrants of arrest against the Almonte spouses after examining the complaining witness Isauro Lique and after finding the existence of probable cause that a crime had been committed; and that the issuance of subpoenas to the accused requiring them to submit their counter-affidavits and other evidence would only be after they shall have been arrested (the second stage or the preliminary investigation proper).

Obviously, the respondent judge failed to keep track with the developments in law and jurisprudence.

In *Sangguniang Bayan of Batac, Ilocos Norte vs. Judge Efren Albano*^[11] and