

THIRD DIVISION

[**A.M. No. MTJ-01-1351 (formerly OCA IPI No. 99-738-MTJ), January 27, 2004**]

DR. JOHN M.W. GRIEVE, COMPLAINANT, VS. JUDGE CORNELIO T. JACA, RESPONDENT.

RESOLUTION

CORONA, J.:

Before us is a letter-complaint filed by John M. W. Grieve charging Judge Cornelio T. Jaca of the Municipal Trial Court of Bantayan, Cebu with gross misconduct and violation of Rule 3.08 of the Code of Judicial Conduct, in connection with Criminal Case No. BSM-97-2301 entitled *People vs. John Grieve* wherein complainant was accused of less serious physical injuries.

By reason of said criminal case, Judge Jaca issued a hold-departure order^[1] against complainant Grieve, prohibiting him from leaving the country until the case was terminated. According to Grieve, it caused him untold embarrassment and inconvenience which could have been avoided had respondent judge been aware that he had no authority to issue the order.

Complainant also prayed for an investigation of an alleged falsification of certain documents that formed part of the records of the criminal case against him. He claimed that the original affidavit on file with the trial court had been replaced by a different affidavit and a "Certificate to File Action" had also been inserted into the records.

In his comment dated August 19, 1999,^[2] Judge Jaca admitted issuing a hold-departure order against Grieve, arguing that the issuance thereof was a matter of procedure to avoid delay in the proceedings of the case by ensuring his presence during the trial.

On the purported falsification of documents, Judge Jaca denied any knowledge of or participation in the alleged substitution of affidavits. He claimed that he came to know about it only after the case was dismissed. Respondent's claim was corroborated by the affidavits of Antonio Villacrusis, clerk of court of the MTC of Bantayan, Cebu, who also denied any knowledge of the purported replacement of the original affidavit on file, and Evelino T. Gillera, court interpreter of the same municipal court.

In the agenda report dated January 5, 2001, then Court Administrator Alfredo L. Benipayo submitted the following findings:

FINDINGS: Respondent Judge violated Circular No. 39-97 dated June 19, 1997 when he issued the hold departure order against the complainant.

The complainant was charged with Less Serious Physical Injuries before the First Municipal Circuit Trial Court in Bantayan, Cebu. Circular No. 39-97 mandates that hold departure order shall be issued in criminal cases within the exclusive jurisdiction of the Regional Trial Courts. Under the law, the penalty for the crime of Less Serious Physical Injuries is arresto mayor which is within the exclusive jurisdiction of the lower courts. Judges were furnished copies of the circular to avoid indiscriminate issuance of the hold departure order.

The allegation of the respondent that the issuance of the hold departure order is a matter of procedure to continue trial exposes his ignorance of the existence of the circular.

To his COMMENT to the letter-complaint, respondent attached two (2) informations for Violation of Section 5 (b), Article III, RA 7610, as amended filed with Branch 61, RTC, Bogu, Cebu against the complainant. These two (2) informations has (sic) no bearing at all in the administrative complaint that was filed against respondent for issuing the hold departure order illegally. Apparently, the purpose of the complainant in attaching to his comment the two (2) informations for Violation of Section 5 (b), Article III, RA 7610, as amended, instead of the information for Less Physical Injuries was to mislead the court. Trying to mislead the court is reprehensible, to say the least.

The allegation of the complainant that the original documents in the case file (sic) in the Office of the Clerk of Court were substituted with another documents was admitted by the respondent. He, however, stressed that he was not aware nor have (sic) knowledge of the substitution. The substitution and/or insertion of the Certificate to File Action and affidavits in the records of a case in the custody of the court is a very serious matter. The Clerk of Court, as custodian of court records, should be also made to explain. A formal investigation is necessary to ferret out the truth so that the circumstances how the substitution was made, and the persons responsible therefore (sic) should be identified.^[3]

Thus, the Court Administrator recommended :

1. That the instant case be RE-DOCKETED as an administrative matter and respondent Judge be penalized to pay a FINE of P10,000.00, for ignorance of the law and misconduct for having issued the Hold Departure Order.
2. That the matter of substitution/insertion of Certification to File Action and Affidavit in the records in the custody of the court be REFERRED to Judge Ildfonso Montilla, Presiding Judge of Branch 61, RTC, Bogu, Cebu for investigation, report and recommendation with a directive that the investigation be not limited to the Judge but also to include the Clerk of Court and other personnel of the court.^[4]

In a resolution dated February 19, 2001, this Court resolved to note the letter-complaint against Judge Jaca and refer the matter of substitution/insertion of affidavits to Judge Ildefonso Montilla of the Regional Trial Court of Bogo, Cebu for investigation. In the same resolution, the clerk of court and other personnel in the sala of Judge Jaca were likewise ordered investigated. Judge Montilla was directed to submit a report and recommendation within 60 days from receipt of the records. It turned out, however, that Judge Montilla had already retired from the service. Thus, the Court issued another resolution dated September 3, 2001, referring the case to Acting Presiding Judge Jesus S. de la Peña for investigation, report and recommendation within 90 days from receipt of the records.

In his report dated April 29, 2002, Judge de la Peña made the following observations:

- a) Judge Jaca merely misinterpreted Memorandum Circular No. 39-97 as far as the issuance of the hold departure order is concerned and while the issuance of such order brought some inconvenience on the part of complainant, the same was rectified when respondent judge set aside his previous order;
- b) complainant's allegation that the original affidavit on file was replaced was unsubstantiated. On the contrary, the records of the criminal case against complainant were all intact;
- c) if there was a substitution/replacement of the subject affidavit, respondent judge could have found complainant guilty instead of dismissing the case.

Judge de la Peña recommended that: (a) respondent Judge Jaca be simply warned that a repetition of the same or similar act of issuing a hold-departure order shall be dealt with more severely in the future and (b) that the clerk of court be absolved from liability for insufficiency of evidence.

This Court noted the abovementioned report in a resolution dated July 29, 2002. On the same date, the Court issued another resolution referring the case to the Office of the Court Administrator for evaluation, report and recommendation within 30 days from notice.

On September 19, 2002, the Office of the Court Administrator, through Deputy Court Administrator Zenaida N. Elepaño, submitted a report finding no sufficient evidence to support complainant's charge against Judge Jaca for falsifying and replacing the original affidavit and other documents on record. However, Judge Jaca was found to have violated Section 9, par. 4 of Rule 140 of the Rules of Court,^[5] which imposes upon the erring judge a penalty of fine of more than P10,000 but not exceeding P20,000. The Deputy Court Administrator further stated in her report that this was the first infraction committed by respondent judge. She made the following recommendations:

- 1) respondent Judge Cornelio T. Jaca, Acting Presiding Judge of the 1st MCTC, Bantayan-Sta. Fe-Madredejos, Cebu, be penalized to pay a FINE of P5,000 for violation of Circular No. 39-97; and