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# FIRST DIVISION

# [ A.M. No. MTJ-04-1538, October 21, 2004 ]

## EVELYN ONG, COMPLAINANT, VS. JUDGE MAXWEL S. ROSETE, ACTING PRESIDING JUDGE, METC, BRANCH 58, SAN JUAN, METRO MANILA, RESPONDENT.

## RESOLUTION

**YNARES-SATIAGO, J.:**

In the **Verified** Complaint[1] and **Supplemental Complaint**[2] that she filed with the Office of the Court Administrator, complainant Evelyn Ong charged respondent Judge Maxwel S. Rosete, Acting Presiding Judge of the Metropolitan Trial Court (MeTC), Branch 58, San Juan, Metro Manila, with bribery, violation of the Anti-Graft Practices Act, and gross ignorance of the law.

It appears that complainant was the private offended party in several criminal cases for violation of the Bouncing Checks Law[3] against a certain Betty Jao. These cases, docketed as Criminal Cases Nos. 46696 to 46709, were raffled to respondent.[4]

On August 22, 2001, immediately after Betty Jao was arraigned, respondent issued an **Order** scheduling the presentation of evidence for the prosecution. He also included the tentative date of judgment, but neglected to include a schedule for the presentation of evidence for the accused.[5]

Later, on October 2, 2001,[6] while the cases were being heard, the Honorable Elvira de Castro Panganiban was appointed regular presiding judge of the said court. This notwithstanding, respondent continued hearing the cases until he dismissed them on December 3, 2001, in a **Resolution** granting a demurrer to evidence.

Complainant accuses respondent of having acted without authority and usurpation of public authority, penalized under Article 177[7] of the Revised Penal Code. She cites A.M. No. 99-7-07-SC, which, according to her, prohibited respondent from acting as presiding judge until after Judge Panganiban had completed her immersion program on November 16, 2001.[8]

Complainant further accuses respondent of violating Section 4[9] of Rule 15 of the Rules of Court.[10] She alleges that after the prosecution was directed to file its formal offer of evidence on November 12, 2001,[11] Betty Jao filed a manifestation with motion. In it, Betty Jao prayed that the prosecution be considered to have waived its right to file other exhibits and that she be allowed to file her demurrer to evidence. Respondent did not set the motion for hearing as requested. Instead, respondent gave the prosecution on November 20, 2001,[12] ten days to file its Comment, stating that after the ten-day period, the motion shall be resolved

without further written or oral arguments.[13]

Complainant likewise asserts that respondent should be held administratively liable under Section 8, Nos. 2[14] and 9,[15] Rule 140 of the Rules of Court for violating Section 3, subparagraphs (e) and (j)[16] of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act as well as for having acted with gross ignorance of the law.[17]

According to her, respondent acted with corrupt motives and specifically intended to prejudice the State by barring it from prosecuting Betty Jao. She asserts that respondent should have been well aware that his designation as Acting Presiding Judge expired on October 2, 2001, when Judge Panganiban was appointed. For continuing to preside over the cases, and for knowingly granting the unwarranted acquittal of Betty Jao, respondent acted with evident bad faith or gross inexcusable negligence.[18]

Complainant likewise assails respondent's December 3, 2001 **Resolution** and accuses him of gross ignorance of the law for its issuance. She contends that respondent should have cited the prosecution in contempt for failing to file the formal offer of evidence as directed, instead of dismissing the case solely on that technicality. She also contends that respondent should have applied *Tiomico v. Court of Appeals,*[19] where this Court held that if the purpose of the testimony is stated, but the testimony is not formally offered, the testimony should nonetheless be admitted. Citing *Tiomico*, complainant argues that respondent erred when he failed to consider the documentary and testimonial evidence offered by the prosecution.[20] At the same time, however, complainant faults respondent for allegedly having misappreciated her testimony. She avers that respondent erred when he held that she admitted having no proof that Betty Jao actually received the demand letters. She asserts that her testimony in court sufficiently proves that Betty Jao received notice of the demand letters at her known address through a certain Jun who signed the registry return cards. She adds that respondent's gross ignorance also shows in his failure to apply the ruling in *Flores v. National Labor Relations Commission*,[21] where we held that the decision of the NLRC sent by registered mail is presumed to have been delivered to a person who was authorized to receive papers for the addressee.[22]

Finally, complainant accuses respondent of having received a bribe in consideration for the dismissal of the cases. She attached the affidavit of one Maria Jinky Andrea Dauz who stated that respondent accepted P50,000 of the P300,000 he demanded for the acquittal of Betty Jao.[23] This, according to complainant, further renders respondent liable for violating Canons 1 and 3 of the Code of Judicial Conduct.[24]

On April 1, 2002,[25] Court Administrator Presbitero J. Velasco, Jr. referred the complaint to respondent and directed him to file his comment. On May 8, 2002, Court Administrator Velasco likewise referred the supplemental complaint that followed.[26]

In his **Comment**[27] dated May 31, 2002, respondent claims that his failure to schedule the presentation of evidence for the defense in the August 22, 2001 **Order**

was merely due to inadvertence, not bad faith. Respondent also denies acting without authority in granting the defense counsel's demurrer to evidence. He asserts that Judge Panganiban assumed office and started performing duties as the regular presiding judge only after she had completed the December 10-14, 2001 Orientation Seminar for Newly-Appointed Judges at the Philippine Judicial Academy. However, before Judge Panganiban actually assumed her judicial duties, the demurrer to evidence had already been submitted for resolution.

Respondent likewise defends his December 3, 2001 Resolution. He stresses that prosecution for violation of the Bouncing Checks Law cannot prosper since there was no absolute proof that Betty Jao was actually notified of the dishonor of the subject checks, as required by *King v. People.*[28] He denies complainant's charge that the dismissal was based solely on the prosecution's failure to make a formal offer. According to him, even if he considered all the documentary evidence that had been identified and marked by the prosecution, the dismissal would have still been proper. In any case, he treated the failure of the prosecution to make a formal offer a waiver of the right to file one.

Finally, respondent denies having received a bribe of P50,000 from Maria Jinky Andrea Dauz. He claims that Ms. Dauz tried to discuss the cases with him at the corridors of the courthouse, but he told her that only the evidence presented would determine the outcome of the case. He also attached Betty Jao's affidavit where Betty Jao detailed how Ms. Dauz attempted to induce her to offer a bribe.

In his initial report dated November 8, 2002, Court Administrator Velasco recommended to this Court that this case be referred to the Executive Judge of the Regional Trial Court of Pasig City for investigation, report and recommendation. We found his recommendation well-founded and adopted it. On January 13, 2003,[29] we referred the case to Executive Judge Edwin A. Villasor, directing him to submit his report and recommendation on the case within 90 days from receipt of the records.

In compliance with the Court's directive, Executive Judge Edwin A. Villasor submitted a **Report** dated January 29, 2004, finding respondent liable only for failing to exercise due care in the preparation of his August 22, 2001 Order.

We agree with the recommendation.

At the outset, it should be stated that respondent had authority to continue hearing Criminal Cases Nos. 46696-46709 despite the appointment of Judge Elvira de Castro Panganiban as regular presiding judge of the MeTC, Branch 58, San Juan, Metro Manila. He also had authority to resolve the demurrer to evidence on December 3, 2001, despite the fact that Judge Panganiban had already completed the required immersion program on November 16, 2001.

Acting presiding judges are designated precisely to forestall a delay in the administration of justice. Under paragraph 4(E) of A.M. No. 99-7-07-SC,[30] however, a new and original appointee to the bench can only perform judicial functions after undergoing the Orientation Seminar conducted by the Philippine Judicial Academy. While Administrative Order No. 84-99 states that respondent's designation as acting presiding judge shall continue "until the appointment of the

judge thereat or until further orders from this Court," it can be construed that the Adm. Order intended that respondent's designation shall be until Judge Panganiban assumes office, after her seminar, and not only until the date her appointment was signed. This interpretation not only meets the requirement of construction to harmonize two seemingly contradictory orders, it also answers the need for speedy dispensation of justice and decision of cases. Hence, it cannot be said that respondent had no authority to act on the cited cases until December 14, 2001.

As to the charges of bribery, corruption and gross ignorance of the law, we agree that they are unfounded. An accusation of bribery is easy to concoct and difficult to disprove.[31] The complainant must present sufficient evidence in support of such an accusation.[32] Inasmuch as what is imputed against the respondent judge connotes a misconduct so grave that, if proven, it would entail dismissal from the bench, the quantum of proof required should be more than substantial.[33] In *Lopez v. Fernandez*[34] we held:

> Numerous administrative charges against erring judges have come to this Court and We viewed them with utmost care, because proceedings of this character, according to In re *Horrileno*[35]…are in their nature highly penal in character and are to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt.

In this case, except for the first scheduled hearing held on March 10, 2003, where complainant only manifested that she needed time to secure the services of counsel, complainant failed to attend any of the other hearings despite notices sent to her.[36] Even after several postponements spanning several months, complainant did not alert the investigating judge of her interest in the case. Thus, aside from the allegations in her Verified Complaint and Supplemental Complaint, there is nothing to substantiate her accusation that respondent violated the Anti-Graft and Corrupt Practices Act, or that respondent showed gross ignorance of the law in rendering the assailed December 3, 2001 Resolution.

For liability to attach because of ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duty must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive.[37] In this case, we agree with the Investigating Executive Judge that evidence failed to show that the December 3, 2001 Resolution rendered by respondent in Criminal Cases Nos. 46696 to 46709 was tainted with bad faith or fraud. In the absence of such proof, the charges against respondent for gross ignorance of the law cannot prosper.

While it is true that the complaint and the supplemental complaint were verified, we must emphasize that they are insufficient proof of the charges. Accusation is not synonymous to guilt.[38] This is especially so in this case since complainant's allegations of bad faith and corruption are mainly speculative.

Even the affidavit of Maria Jinky Andrea Dauz lacks evidentiary value. It is not difficult to manufacture charges in affidavits, hence, it is imperative that their truthfulness and veracity be tested in the crucible of thorough examination. Unless the affiants themselves take the witness stand to affirm the averments in their