

SECOND DIVISION

[**A.M. No. MTJ-02-1427. (Formerly OCA-IPI No. 01-1021-MTJ), February 27, 2003**]

MODESTO MAGSUCANG, COMPLAINANT, VS. JUDGE ROLANDO V. BALGOS, MTC, HINIGARAN, NEGROS OCCIDENTAL, RESPONDENT.

RESOLUTION

QUISUMBING, J.:

In a letter-complaint dated November 18, 2000 and addressed to the Secretary of the Department of Interior and Local Government, complainant Modesto Magsucang charged Judge Rolando Balgos, Presiding Judge, MTC, Hinigaran, Negros Occidental, of bias and partiality, grave abuse of discretion, requiring excessive bail, and violation of the Rules of Criminal Procedure.

It appears from the records that on May 10, 2000, a certain Pepito Lim, owner of the Ace Fishing Corporation, filed a criminal complaint for qualified theft against complainant's daughter, Rosalie Magsucang, allegedly for misappropriating cash amounting to P11,200, with grave abuse of confidence. The case was docketed as Criminal Case No. 1593. Subsequently, respondent judge, before whom the preliminary investigation was conducted, issued a warrant of arrest. Bail was set at P30,000. On May 11, 2000, Rosalie was arrested. Complainant posted bail for his daughter from the proceeds of the sale of his banca and with money borrowed from friends.

Meanwhile, more cases for qualified theft were filed by Mr. Lim against Rosalie. These cases were docketed as Criminal Case Nos. 1608, 1609, 1610, 1611, 1612, 1613, 1634, and 1635. After preliminary investigations were conducted in these cases, corresponding warrants of arrest were issued by respondent judge. In Criminal Case No. 1635, bail was set at P24,000. Neither Modesto nor Rosalie had money to pay for bail so Rosalie remained incarcerated.

Complainant faults respondent judge for allegedly committing irregularities in the conduct of the preliminary investigation when respondent judge administered the oath to Pepito Lim and for having sent Rosalie to prison without the benefit of a hearing. According to complainant, when respondent judge issued several subpoenas on June 2, 2000, requiring Rosalie to file her counter-affidavit in Criminal Case Nos. 1608 to 1613, inclusive, he likewise committed grave abuse of discretion since he failed to consider that Rosalie was, at the time, locked in jail and incapable of defending herself in court. Lastly, complainant states that respondent judge violated applicable rules and regulation when he required excessive bail.

On November 10, 2000, the letter-complaint was referred to the Office of the Court Administrator. On January 25, 2001, then Court Administrator Alfredo L. Benipayo

required respondent judge to file his comment.

In his comment, respondent maintained that the rules of procedure were followed in the filing of the criminal complaints against Rosalie Magsucang. Criminal Cases Nos. 1608, 1609, 1610, 1611, 1612, 1613, 1634 and 1635, all for qualified theft, were filed against Rosalie after Criminal Case No. 1593. In all these later cases, Rosalie filed her counter-affidavit and that of her witness only after she was already arrested. There is, therefore, no truth to the complainant's allegation that respondent judge acted pursuant to a conscious effort to defeat the bail posted in Criminal Case No. 1593. He added that Rosalie virtually disappeared after posting bail in Criminal Case No. 1593; she was only arrested after an intensive police effort to find her.

Respondent further declared that, excluding Criminal Cases Nos. 1634 and 1635, which were dismissed, he found probable cause to hold Rosalie Magsucang liable for eight (8) counts of qualified theft. The resolution and the records of the case have been transmitted to the Office of the Provincial Prosecutor in Bacolod City for review.

The incumbent Court Administrator, Justice Presbitero Velasco, found respondent judge innocent of the charges contained in the letter-complaint, except the charge related to excessive bail. Justice Velasco recommended that the case be re-docketed as a regular administrative matter and that the respondent judge be fined in the amount of P2,000.

The parties were asked to manifest whether they agree to submit the case for decision on the basis of the pleadings on record. Respondent agreed. Complainant did not respond and is deemed to have no objection thereto. We shall now resolve the issues raised in the complaint.

First, as to the charge that respondent judge acted with bias and partiality, we find that complainant failed to substantiate his claim. Other than the letter-complaint, no evidence was introduced clearly pointing to an act manifestly favoring private complainant Pepito Lim and injuring the rights of accused Rosalie Magsucang. In *Araos vs. Luna-Pison*,^[1] we held that the absence of any evidence showing that the respondent judge acted in bad faith, ill-will, or malice reduces the charges against him into a mere indictment. Charges based on mere suspicion and speculation cannot be given credence.^[2]

Well to remember as investigating officer the respondent judge is given the latitude to determine if there exists probable cause that would warrant either the filing of the corresponding information or the outright dismissal of the case. Although there is no general formula or fixed rule for the determination of probable cause since it must be decided in the light of the conditions obtaining in a given case, its existence depends to a large degree on the findings or opinion of the judge conducting the investigation.

Mere allegations in the complaint must be supported by evidence to prove that a judge has overstepped the parameters of his official prerogative. Here, we find that complainant has failed to present any evidence to corroborate his assertion that respondent judge is guilty of committing irregularities in the conduct of the preliminary investigation.