

SECOND DIVISION

[A.M. No. MTJ-02-1437 (Formerly OCA IPI No. 01-1094-MTJ), August 20, 2003]

PROSECUTOR JAIME E. CONTRERAS, COMPLAINANT, VS. JUDGE EDDIE P. MONSERATE, MCTC-MAGARAO, CAMARINES SUR, RESPONDENT.

DECISION

QUISUMBING, J.:

Charges of "gross ignorance of the law" and "gross neglect of duty" were filed by the Provincial Prosecution Office of Camarines Sur, signed by 2nd Asst. Provincial Prosecutor and approved by the Provincial Prosecutor, against respondent Judge Eddie P. Monserate, of the Municipal Circuit Trial Court of Magarao-Canaman, Camarines Sur.

Specifically, respondent is charged of forwarding Criminal Case No. 3222, entitled "*People of the Philippines v. Mario Zabaldica y Morandarte*," to the Office of the Provincial Prosecutor without first conducting the requisite preliminary investigation.

It appears that on November 27, 2000, SPO4 Prudente A. Belleza of Philippine National Police (PNP) filed a criminal complaint for frustrated homicide, docketed as Criminal Case No. 3222, against one Mario Zabaldica with the MCTC of Magarao-Canaman. The next day, accused through counsel, filed an *Ex Parte* Motion to Fix Bail, which the respondent judge granted.

On December 5, 2000, Judge Monserate ordered the release of Zabaldica from PNP custody for having posted corporate bond. That same day he also issued the following order:

It appearing from the complaint that the accused was lawfully arrested without a warrant for an offense cognizable by the Regional Trial Court, and that accused failed to avail of his right to a preliminary investigation pursuant to Sec. 7 of Rule 112 of the Rules of Court, the information may now be filed with the proper court.

Send the records of this case to the Provincial Prosecutor's Office for the filing of information.^[1]

Complainant laments that said order of respondent judge violated Section 3,^[2] Rule 112 of the 1985 Rules on Criminal Procedure, which requires that in all criminal cases cognizable by the Regional Trial Court (RTC), but filed before the Municipal Trial Court (MTC), the latter must always conduct a preliminary investigation to determine probable cause. According to complainant, respondent's failure to conduct a preliminary investigation manifests his gross ignorance of the law and is a willful

abdication of a duty imposed by law. Complainant further avers that Judge Monserate erred in relying upon Section 7,^[3] Rule 112 of the 1985 Rules on Criminal Procedure as said provision applies only to cases where it is the offended party, peace-officer, or the prosecutor who files a case before a court of competent jurisdiction, *i.e.*, the RTC. Hence, according to complainant, said rule does not apply to cases filed before the MTC for the sole purpose of conducting a preliminary investigation, the results of which shall then be forwarded to the prosecutor who will then determine whether or not an information must be filed with the RTC.

In his Letter-Comment dated July 17, 2001, respondent judge vehemently denies the material allegations in the complaint. In justifying his actions, respondent judge insists that what really happened in Criminal Case No. 3222 is as follows:

The stabbing incident occurred November 25, 2000 at around 10:00 P.M. Several hours after, the accused voluntarily gave himself up to the police at their residence. Since November 25, was a Saturday, the following day (Sunday) a complaint for frustrated homicide was made duly subscribed on that day but was officially filed [i]n Court on November 27, 2000. On November 28, 2000 the accused filed a motion to fix bail which the Court granted the very same day. On December 5, 2000, the records of the case was forwarded to Provincial Prosecution Office for the filing of an information without the Court conducting the preliminary investigation for failure of the accused to avail of his right pursuant to Sec. 7, Rule 112 of the Rules of Court. On January 19, 2001, the records of the case was returned to the Court with an Order from Prosecutor Contreras [for Judge Eddie P. Monserate] to conduct a preliminary investigation and at the same time threatening the Presiding Judge that he will file an administrative charge for gross ignorance of the law if he will refuse. In spite of the threat, [Judge Monserate] returned the records of the case to the Provincial Prosecution Office for reason that preliminary investigation is not necessary under the rules and that accused himself has not requested for a preliminary investigation despite his knowledge that a complaint was filed against him....^[4]

Relying on the above narration, respondent judge contends that he committed no error since pursuant to Section 7, Rule 112, an accused's failure to avail of his right to preliminary investigation could be deemed a waiver thereof. In view of said "waiver," respondent judge concluded, it was but logical that he should forward the records of the case to the Office of the Provincial Prosecutor for the filing of the necessary information.

In its Evaluation, Report and Recommendation dated April 11, 2002, the Office of the Court Administrator found that respondent judge erred in invoking Section 7, Rule 112 of the 1985 Rules on Criminal Procedure. According to the OCA, despite an accused's failure to insist on his right to preliminary investigation, the respondent judge was still mandated to examine the complainant and his witnesses under oath to determine whether they had voluntarily appeared before him. If statements were given to a police investigator, he should examine the affiants personally to determine whether the evidence presented sufficed to engender a well-founded belief as to the fact of the commission of the crime, and that the accused is probably guilty thereof. After the conclusion of the preliminary investigation, the municipal judge is tasked with preparing a resolution, stating briefly the findings of

facts and the law supporting his action, which together with the entire records should then be forwarded to the prosecutorial arm, according to OCA.

We agree with the OCA's findings and observations. Respondent judge's reliance on Section 7, Rule 112 of the 1985 Rules on Criminal Procedure^[5] to justify his refusal to conduct a preliminary investigation is misplaced. Under the similarly entitled section now of Rule 112 already effective December 1, 2000, just before the December 5, 2000 Order of respondent judge was issued^[6], the only instance where an information for an offense which requires a preliminary investigation may be filed directly with the court is when an accused is lawfully detained without a warrant *and* he expressly refuses to waive in writing the provisions of Art. 125^[7] of the Revised Penal Code.^[8] If the accused refuses or fails to sign the requisite waiver, an information shall forthwith be filed against him, subject to his right to move for reinvestigation within five (5) days from the time he learns of the filing of said information. The right to have a preliminary investigation conducted before being bound over for trial for a criminal offense and hence at the risk of incarceration or some other penalty is not a mere formal or technical right but a substantive right.^[9] Hence, any exception to the enjoyment of said right must be strictly construed. In the instant case, nowhere is it shown or indicated in the assailed order that the accused in Criminal Case No. 3222 refused to waive, expressly and in writing, the provisions of Art. 125. Moreover, that said accused did not resist arrest is immaterial, as voluntary surrender is not among the exceptions to the mandatory requirement of preliminary investigation in criminal prosecution. Respondent judge, therefore, had no valid reason to refuse conducting the preliminary investigation.

Respondent judge asserts that the Provincial Prosecution Office has no authority to order him to conduct a preliminary investigation inasmuch as the court's primary duty is to hold trial and render decisions, and not to conduct preliminary investigations. His assertion is far from accurate. Respondent judge must be reminded of the duty imposed upon him by Section 1(a),^[10] Rule 110 of the Revised Rules on Criminal Procedure. Said provision speaks of the "proper officer" who shall conduct the "requisite preliminary investigation." Under Section 2^[11], Rule 112 of the Revised Rules on Criminal Procedure, a municipal court judge, like herein respondent, is a "proper officer" authorized to conduct a preliminary investigation. Further, a preliminary investigation is not a judicial function, and as such the findings of the investigating judge are subject to the oversight powers of the public prosecutor. Thus, in *Cabarloc v. Cabusora*,^[12] we held that:

When a municipal judge conducts a preliminary investigation, he performs a non-judicial function. His function is merely executive in nature. As such, the findings of an investigating judge are subject to review by the Provincial Fiscal whose findings in turn may also be reviewed by the Secretary of Justice in appropriate cases.

Clearly, therefore, Provincial Prosecutor Agapito B. Rosales,^[13] through his Second Asst. Provincial Prosecutor, had the authority to compel respondent judge to conduct a preliminary investigation in Criminal Case No. 3222.

Respondent's failure to conduct a preliminary hearing is further compounded by his order granting bail to the accused in Criminal Case No. 3222, without the requisite