

THIRD DIVISION

[A.M. No. RTJ-03-1788, September 05, 2003]

JORGE F. ABELLA, COMPLAINANT, VS. JUDGE FRANCISCO L. CALINGIN, REGIONAL TRIAL COURT, BRANCH 22, CAGAYAN DE ORO CITY, RESPONDENT.

DECISION

PANGANIBAN, J.:

Men and women of the bench are the visible representations of law and justice.^[1] Judges are therefore expected to be circumspect in the performance of their duties.^[2] And rightly so, for theirs is a duty to administer justice in a manner that inspires confidence in the integrity of the judiciary.

The Case and the Facts

The Administrative Complaint,^[3] filed by Jorge F. Abella, charges Judge Francisco L. Calingin of the Regional Trial Court of Cagayan de Oro City (Branch 22) with "manifest bias, gross incompetence, gross ignorance of the law and grave abuse of authority." The Office of the Court Administrator (OCA) summarized the factual antecedents as follows:

"Complainant, who is the private complainant in the aforesaid case, alleges that sometime on April 1998, he discovered some missing items in his pawnshop. About 271 pouches yielded tissue papers, coins and other materials to make it appear that [the] contents were still inside the pouches. After inventories, the total value of the stolen articles amounted to P1,079,665.00.

"He filed a case for Qualified Theft against Imelda Salarda Awa, the appraiser and cashier of the pawnshop. On 28 September 1998, the Office of the City Prosecutor recommended the prosecution of Imelda S. Awa for Qualified Theft and, an information was subsequently filed in court.

"According to complainant, while the case was still under preliminary investigation, he brought some pieces of jewelry amounting to P333,790.00 as evidence. The [pieces of] jewelry [were] deposited with the investigating fiscal for safekeeping.

"Subsequently, the case was assigned to RTC, Branch 22 presided by herein respondent Judge. After a series of hearings and conferences, the parties reached a compromise settlement of the civil aspect and the case was eventually dismissed.

"On 23 August 2000, the counsel for the accused filed a 'Motion Directing the Office of the City Prosecutor to Allow the Accused to Retrieve the Pieces of Evidence Deposited Thereat.' After a hearing, respondent Judge issued an Order dated 1 September 2000 granting the Motion.

"On 11 September 2000, complainant's counsel filed a Motion for Reconsideration. Respondent Judge reconsidered his Order dated 1 September 2000, and directed that the pieces of [jewelry] be turned over to him (complainant). However, the pieces of jewelry were already withdrawn by the accused from the City Prosecutor's Office.

"The counsel for the accused filed a Motion for Reconsideration which was denied by the court. He then filed a Petition for Review on Certiorari before the Supreme Court but the same was later dismissed and the case was declared closed and terminated for their failure to file the petition within the period granted by the Court.

"Complainant claims the filing of the Petition was a ploy to delay the proceedings considering that the pieces of jewelry were already in the possession of the accused.

"Since the judgment of the court has become final and executory, complainant filed a Motion for Execution praying that said jewelry be turned over to him as rightful owner thereof. Respondent Judge denied the Motion for Execution as well as the Motion for Reconsideration subsequently filed by complainant.

"Complainant avers that respondent Judge's failure to allow the execution of his own order which has already attained finality has no basis and obviously crafted in order to favor the accused who is in possession of the jewelry.

"[In his Comment dated June 4, 2002, respondent Judge denied the allegations in the Complaint.] He explains that complainant is the private complainant in Criminal Case No. 98-845, x x x for Qualified Theft. Before trial commenced, the parties executed a Compromise Agreement which settled the civil aspect of the case. Thereafter, a Motion to Dismiss was filed by the Prosecution and the same was granted by the court in its Order dated 18 August 2000.

"On 24 August 2000, accused, through counsel, filed a Motion Directing the Office of the City Prosecutor to Allow the Accused to Retrieve the Pieces of Evidence Deposited Thereat stating that said evidence belong to the accused as it is covered/included in the Compromise Agreement. There being no opposition interposed by the Public and Private Prosecutors, the motion was granted (Order dated 1 September 2000).

"Thereafter, the Private Prosecutor filed a Motion for Reconsideration of the Order dated 1 September 2000 claiming that the pieces of evidence were deposited and owned by herein complainant. Acting on said Motion, the court ordered that the pieces of evidence be turned over to the

private complainant and, if ever the accused has taken possession of said exhibits, the same should be turned over to the City Prosecutor's Office (Order dated 15 September 2000).

"Accused filed a Motion for Reconsideration of the Order dated 15 September 2000 but the court denied said motion (Order dated 3 October 2000). The accused filed with the Supreme Court a Motion for Extension of Time to File a Petition for Review on Certiorari which was granted. However, in a subsequent Resolution dated 26 February 2001, the Court declared the case closed and terminated and that the Judgment sought to be reviewed has become final and executory due to the failure of the accused's counsel to file the petition within the extended period.

"Meanwhile, a new counsel for the private complainant (herein complainant) entered his appearance. The new private prosecutor filed on 30 May 2001 a Motion for Execution of the Order dated 18 August 2000. In its Order dated 9 July 2001, the court granted the Motion. Consequently, a Writ of Execution was issued by the court on 24 July 2001. However, even before a Return of the Writ can be submitted by the Sheriff, the private prosecutor filed another Motion to Execute Order dated 3 October 2000. The court denied the Motion for Execution as well as the subsequent Motion for Reconsideration.

"Respondent Judge explains that the filing of the second Motion for Execution while the Writ of Execution was still in effect is premature and would only be a duplication of a previous order issued by the court. Significantly, the subject matter of the Writ of Execution dated 24 July 2001 was the content of the Compromise Agreement entered into by the parties. The agreement contained the civil liability of the accused, the manner of payment and the liability of the father of the accused in the event the latter fails to comply with her obligation.

"If pursuant to the Writ of Execution, the sheriff was able to levy properties of the father sufficient to answer the obligation of the accused, then there is no more necessity to issue another Writ of Execution. As regards the jewelry submitted by the complainant before the City Prosecutor, the Orders dated 15 September 2000 and 3 October 2000 were sufficient for the complainant to demand the return of the pieces of jewelry. Records, however, revealed that complainant did nothing to press for the return of said jewelry even after he discovered that the same were already withdrawn by the accused.

"Respondent Judge notes that in the Motions filed by the complainant, the latter failed to describe with particularity the pieces of jewelry submitted to the City Prosecutor. Such description is fundamental in a case for delivery of personal property or replevin. It is only in this instant administrative case that he learned that there was actually an inventory conducted thereon. In a sense, the Order (dated 3 October 2000) did not yet attain finality because there are still things incumbent upon the complainant, like providing a description of the property sought to be recovered, which he has not yet done."^[4]