

## EN BANC

**[ A.M. No. MTJ-02-1418 (formerly OCA IPI No. 00-871-MTJ), December 10, 2003 ]**

**CARMENCITA D. CACATIAN, COMPLAINANT, VS. JUDGE RICARDO P. LIWANAG, MUNICIPAL TRIAL COURT, SAN JOSE DEL MONTE, BULACAN, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

The instant administrative case arose when Carmencita D. Cacatian charged Municipal Trial Court Judge Ricardo P. Liwanag of San Jose del Monte Bulacan, with grave misconduct, grave abuse of authority and conduct unbecoming of a member of the bench in a sworn complaint dated March 12, 2000. According to the complainant, Judge Liwanag, "far from adhering to the qualities of a wise and just magistrate," committed the following:

- A. Violated the law, i.e., the "franking privilege" granted under the provisions of PD 26 when he sent to herein complainant a demand letter pertaining to a private transaction but using his judicial office to avoid the payment of a postal stamp as shown by the envelope of said letter (Annex "B-1");
- B. Exhibited malicious, abusive and criminal conduct when:
  - (1) he shot complainant with a firearm covered by an expired license,
  - (2) he filed a criminal charge against her for *Estafa* based on false and perjurious allegations, and
  - (3) he issued successive warrants for her arrest knowing, fully well, that her failure to attend the hearing of the case against her was due to his manipulations;
- C. Displayed notoriety and impropriety as shown by the fact that
  - (1) the respondent judge transacted business with herein complainant despite the fact that herein complainant has a pending case before his *sala*;
  - (2) refused to recuse himself from hearing said case despite having filed an *estafa* case against herein complainant who likewise filed a complainant (*sic*) for frustrated homicide against him;

(3) filing the *estafa* case in his own *sala*; ...<sup>[1]</sup>

The accusations against the respondent as summarized by the Office of the Court Administrator (OCA) in its Report dated March 1, 2002 are as follows:

Complainant, who is the accused in Criminal Cases Nos. 8367 to 8398 pending before respondent, alleges that during the pendency of the aforesaid cases, respondent started frequenting the club that she manages, the "Daeyun Videoke Club" at Lagro, Quezon City. When he learned that she had connections with the Firearms and Explosives Division (FED) of the PNP, he requested her assistance in fixing his 9mm pistol as well as in acquiring a new 380-caliber Beretta automatic pistol. Respondent handed to her P10,000 to be used as down payment for the new gun.

On 31 July 1999 at around 8:30 p.m., complainant was informed that respondent wanted to see her inside the VIP room of "Daeyun Bar and Videoke Club" which is located beside her residence. Upon entering the aforementioned room, the visibly drunken respondent started berating her, allegedly because of her failure to facilitate the immediate approval of the license covering his new firearm as well as the poor job done on his old gun. She then saw him point the gun at her after which a shot rang out hitting her on the left hand. She was brought to the hospital by respondent Judge's driver.

While she was still at the hospital, respondent Judge promised to shoulder her hospital expenses and pleaded with her not to report the matter to the police or file criminal charges against him. Because of the said incident, she lost the use of her left hand.

Sometime in August 1999, complainant sought reimbursement of the cost of her hospitalization from respondent. However, the latter became furious and refused to reimburse her for the said expenses and even threatened to make things very difficult for her.

Thereafter on 20 September 1999, she received a demand letter dated 7 September 1999 from respondent enclosed in a brown letter envelope which bore the sender's address as "Judge Ricardo P. Liwanag, Municipal Trial Court, San Jose del Monte, Bulacan" and in lieu of the mandatory postal stamp are the words "Free Under PD 26."

Meanwhile on 10 September 1999, respondent filed a criminal complaint against complainant for *Estafa* before the MTC of San Jose Del Monte. On the same day, a warrant for her arrest was issued. In his complaint, respondent alleged that herein complainant misappropriated the sum of P45,000.00 which was intended for the purchase of a new gun. Complainant admits that she received P10,000 from respondent Judge that the latter handed to her at the Videoke Club as down payment for the purchase of a new firearm but denies having received from him an FEG 9mm pistol which is allegedly valued at P35,000.

Verification with the Firearms and Explosives Division of the PNP revealed that only a 9mm Daewoo pistol with Serial No. BA005065 was licensed in the name of respondent. Complainant also points out that if respondent's allegation that the money and pistol were handed to her in his chambers is true, then he committed a breach of judicial conduct for performing personal transactions therein with a person who had pending cases before his sala.

She insists that the criminal complaint for estafa is baseless because as early as 16 August 1999 she had already submitted respondent's application for license before the FEB of the PNP. Moreover, the date of its filing (10 September) precedes the date of mailing of the demand letter (13 September 1999) indicating that the case was filed even before the mailing of the letter to herein complainant. She denies that she was previously furnished with a copy thereof on 9 September 1999.

On 12 October 1999 herein complainant filed a criminal complaint for frustrated homicide against respondent Judge before the Office of the City Prosecutor of Quezon City. The case was scheduled for preliminary investigation on 11 November 1999. On said date, she was arrested by the elements of CIDG, PNP, Bulacan on the strength of a warrant of arrest issued by respondent. She was then brought to the Malolos Police Station.

The following day, her sister had to appear on her behalf before respondent's sala for the hearing of her cases. Despite his personal knowledge of her detention and complainant's sister's explanations, respondent ordered complainant's arrest for failure to appear during the said hearing. In said order, respondent cited an alleged report that complainant was released from detention at around 10:00 a.m. Even if the same were true, complainant asserts that she was neither physically nor emotionally prepared to appear at the hearing. Thereafter, the respondent inhibited himself from hearing all cases against the complainant which are pending before him.<sup>[2]</sup>

The respondent judge denied all the charges against him in his Answer dated June 23, 2000. He never frequented the Daeyun Videoke Club, but admitted that he went there once to get his gun, thinking that it was the complainant's residence. He averred that he had no time to engage in nocturnal activities even after office hours because of the volume of his work. Furthermore, as a resident of Plaridel, Bulacan, it would take him no less than an hour to reach Lagro, Novaliches, Quezon City. According to the respondent:

That what actually happened that night of July 31, 1999 which resulted to the hand injury unfortunately suffered by Mrs. Cacatian was the result of her own gross negligence because when she requested to see the Daewoo pistol respondent told his driver to get the gun from his car as it was his driver who placed it earlier inside the vehicle. When the driver returned to the place where respondent Judge and Mrs. Cacatian were talking in the presence of her common-law husband (Rowan Dominais) the driver removed the gun's magazine then handed over the same direct to Mrs. Cacatian who, because she might have been thinking then or of

the erroneous impression that there was no bullet in the pistol's chamber, in turn recklessly pulled the trigger in the course of her cursory examination of the rebluing job done earlier to the firearm and when the gun suddenly went off she unexpectedly hit her left palm which shocked every one then present. If there really was a berating act from the respondent's end and if the undersigned was fuming mad such behavior could not have escaped Rowan Dominais' attention and also could have immediately forewarned said common-law husband to be alert at her defense and when the shooting happened he could have also waged immediately an attack directed against the respondent Judge or shouted somehow for help from the herd of their employees then physically present but the stunning silence or complete absence of any retaliatory or defensive reaction from anyone inside the establishment would already render Mrs. Cacatian's account without legs to stand on and, at the same time, unerringly point that the version of Mrs. Cacatian as borne now by her complaint is certainly unfounded as it is untrue and against the normal reaction of one confronted with a startling event or occurrence as a shooting done right under the nose of one's live-in partner.<sup>[3]</sup>

The respondent admitted that he had indeed sent a demand letter<sup>[4]</sup> to the complainant, but averred that the mailing clerk must have "inadvertently commingled" the same with the other official letters coming from the court, resulting in the innocent usage of the official envelope. He also averred that his filing a complaint for estafa against the complainant before the MTC of San Jose del Monte, Bulacan is appropriate and legal, because the incident happened within the said town. The respondent also clarified that while he issued a warrant of arrest against the complainant in the criminal cases pending before his *sala*, it was through the instance or manifestation of the private prosecutor, Atty. Antonio Senador and private complainant Teresita Gutierrez who filed numerous criminal cases against the complainant. The respondent judge also averred that he had no knowledge of the complainant's arrest on November 11, 1999, until the complainant's sister went to his office and relayed the matter to the clerk of court who, in turn, informed the respondent. The respondent insisted that he had no liability to the complainant, whatsoever, since the shooting incident was accidental, thus:

That Mrs. Cacatian being a long time employee of the Firearms and Explosives Division of the PNP and experienced in handling of guns plus the fact that she was once married to a police officer who has had also experience in handling guns even right at their residence as he could have been bringing home likewise his service firearms, she was expected to exercise extra precautionary measures whenever handling a gun, however, she did not display such behavior nor prudence because of mental lapse which resulted to the accident of her own making.<sup>[5]</sup>

Finally, after a careful analysis of the situation, the respondent judge issued an Order<sup>[6]</sup> dated November 18, 1999, inhibiting himself in all cases filed against the complainant pending before his *sala*.<sup>[7]</sup>

Pursuant to the OCA's recommendation, the case was redocketed as an administrative matter, and was assigned to Executive Judge Oscar C. Herrera, Jr. for