

## SECOND DIVISION

[ **A.M. No. MTJ-00-1312 (Formerly OCA IPI No. 97-390-MTJ), February 28, 2001** ]

**GERARDO UBANDO-PARAS, CHIEF OF POLICE-GEN. NATIVIDAD, NUEVA ECIJA, COMPLAINANT, VS. JUDGE OCTAVIO A. FERNANDEZ, RESPONDENT.**

### R E S O L U T I O N

**QUISUMBING, J.:**

On June 5, 1997, complainant Gerardo Ubando-Paras, the Chief of Police of General M. Natividad, Nueva Ecija, charged Judge Octavio A. Fernandez, of the Municipal Circuit Trial Court in Natividad-Llanera, Nueva Ecija, for Irregularity in the Performance of Official Duty in connection with Criminal Case No. 2477-N, entitled "*People of the Philippines vs. Vicente Joaquin*" for Violation of P.D. No. 1866 (Illegal Possession of Firearms).

In his letter-complaint, addressed to the Executive Judge, RTC of Cabanatuan City, Chief Ubando-Paras alleged that on February 26, 1997, complainant, with two (2) policemen, armed with a search warrant issued by respondent, conducted a search at the residence of Domingo Joaquin and Vicente Joaquin. They confiscated a .22 caliber Arminus revolver with serial number 90976 and eight (8) pieces of .22 caliber bullets from Vicente Joaquin. A complaint was filed and Vicente Joaquin was arrested and accused. On March 3, 1997, respondent ordered the release of the accused upon a cash bond allegedly of P60,000.00.

The preliminary investigation of Joaquin's case was first set on March 7, 1997 but was re-set to March 10, 1997. Since then no action had been taken despite several follow-ups by complainant. He filed a motion dated March 17, 1997, asking that the criminal complaint be remanded to the Office of the Provincial Prosecutor, to no avail. According to Chief Ubando-Paras, respondent should be administratively disciplined also for erroneously ordering the release of the accused Vicente Joaquin. Certifications by Teresita S. Esteban, Clerk of Court, dated April 18, 1997 attest that the accused did not file the aforementioned cash bond, and that she did not have the case *expediente*, the Chief said. He also presented a letter dated April 15, 1997 from a certain Jose Natividad stating that the record of the case for illegal possession of firearms was with respondent.

In his Comment dated November 10, 1997, respondent pointed out that the said criminal case against Joaquin was filed with the Office of the Clerk of Court and endorsed to him for preliminary investigation. Pursuant to the rules on preliminary investigation, he said he summoned both parties. Joaquin's wife, Remalyn, complained of the illegality of the arrest and detention in the municipal jail of her husband and that the arresting officers demanded money for the dropping of the charges and the release of her husband, according to respondent. She pleaded that

they be allowed to post bail in the amount they could afford. After informing the public prosecutor of the motion for bail and finding no objection, respondent set bail at P60,000.00. Joaquin and a personal guarantor issued and deposited in Court PNB Check No. 381572, dated 3 March 1997. Respondent then issued an Order of Release stating therein the deposit of the check for the release of the accused, without prejudice to the outcome of the preliminary investigation.

Respondent explained he did not remand the complaint to the Provincial Prosecutor Office because, under the rules, he had to first investigate the case, determine if there was probable cause, and file or dismiss it. Thence, the resolution/order would be forwarded to the Provincial Prosecutor's Office for review. He added that to remand the case without first these determinations would invite charges against him for being either ignorant of procedural laws and rules, or for being remiss in his duty. Respondent added that after careful scrutiny of the evidence and finding no probable cause, he dismissed the complaint and forwarded the resolution of dismissal to the Provincial Prosecutor's Office for review. Respondent judge avers that since the resolution dismissing the charge was already forwarded to the Office of the Provincial Prosecutor as well as the *expediente* of the case, for approval or disapproval, there appears no further cause for the instant complaint.

In a letter dated September 23, 1998 addressed to the Court Administrator, respondent sent a copy of a resolution dated December 12, 1997 issued by the Office of the Provincial Prosecutor of Cabanatuan City, denying the motion for reconsideration of the Office of the Prosecutor's approval of the dismissal of the criminal complaint. According to respondent, the Office of the Provincial Prosecutor had earlier affirmed and concurred with the dismissal of the criminal complaint.

In its report and evaluation of the complaint, the Office of the Court Administrator found that respondent, Judge Octavio A. Fernandez, manifested ignorance of the law when he erroneously applied P.D. 911 and the Judiciary Reorganization Act instead of Sec. 3 (b), (f), Sec. 4, and Sec. 5 of Rule 112 of the 1985 Rules on Criminal Procedure.<sup>[1]</sup> Likewise, respondent exhibited gross ignorance of the law, according to the OCA, when he ordered the release of Joaquin, upon the latter's payment of a check for P60,000.00 to the court, contrary to Section 14 of Rule 114 of the Rules on Criminal Procedure<sup>[2]</sup> which requires payment of a cash bond with the nearest collector of internal revenue, or provincial, city or municipal treasurer, and upon submission of a proper certificate of deposit and a written undertaking showing compliance with the requirements of the said rule.

Further, according to the OCA, respondent did not promptly transmit the records of the case as required by Sec. 3 (b) and Sec. 4 of Rule 112.<sup>[3]</sup> The OCA also observed that there was no record when respondent judge submitted the resolution and *expediente* to the prosecutor's office and there was no copy of the supposed resolution. In fact, the Clerk of Court, Teresita S. Esteban, in a letter dated April 18, 1997, stated that she was not aware of any "resolution" in connection with Criminal Case No. 24771-N and that said records were kept on file at Llanera, Nueva Ecija. We note, however, that there appears on record a Resolution dated December 12, 1997, issued by the Office of the Provincial Prosecutor of Cabanatuan City, which denied the motion for reconsideration filed by complainant.

The report also mentioned that respondent had two (2) other administrative cases,