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SECOND DIVISION

[A.M. No. MTJ-99-1236, November 25, 1999]

GERMAN AGUNDAY, COMPLAINANT, VS. JUDGE NIETO T. TRESVALLES, MTC, VIRAC, CATANDUANES, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This refers to a complaint filed by German Agunday against Judge Nieto T. Tresvalles of the Municipal Trial Court of Virac, Catanduanes charging him with gross ignorance of the law, inefficiency, and partiality in connection with his handling of Criminal Case No. 4792, entitled "People v. Lope Panti, Sr., et al."

The facts of this case are as follows:

On September 25, 1997, the Second Assistant Provincial Prosecutor of Virac, Catanduanes filed an information for malicious mischief against Lope Panti, Sr., Leopoldo Panti, and Engr. Fernando Asuncion in the Municipal Trial Court of Virac, Catanduanes, presided over by respondent judge. Respondent judge conducted a preliminary investigation of the case and then required the accused to post bail in the amount of P4,200.00 each. On January 26, 1998, four months after the filing of the case with his court, respondent judge issued an order declaring that the case was covered by the Revised Rule on Summary Procedure and, for this reason, directing that a copy of the complaint and the affidavits of the complainant be served on the accused who were ordered to file their counter affidavit within ten days.

Complainant, the offended party in the criminal case, appeared at the hearings held on April 7, April 20, and June 1, 1998. At around 9:25 in the morning of August 10, 1998, counsel for the defense filed a motion to quash the information, stating that:

COME NOW, the accused by the undersigned counsel and to this Honorable Court, respectfully move to Quash the information in the above-entitled case on the following:

GROUND:

> THAT THE FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE (Sec. 3, Rule 117, Rules of Court) AS BOLSTERED BY THE FINDINGS OF THE OMBUDSMAN AFFIRMING THE PREVIOUS DISMISSAL OF THIS CASE BY THE PROVINCIAL PROSECUTION OFFICE

ARGUMENTS:

Per Review Action issued by the Office of the Deputy Ombudsman for Luzon, dated July 14, 1998, copy of which is hereto attached as Annex "1" and forming integral part hereof, the resolution of 2nd Asst. Provincial Prosecutor Antonio C.A. Ayo, Jr. (a) dismissing the case filed by Mr. German Agunday against public respondents Lemuel B. Velasco, Valentin Gonzales and Isidro Guerrero, Deputy Sheriff, Process Server and Aide respectively, of the RTC of Virac, Catanduanes for violation of Sec. 3 (e) of R.A. 3019 and violation of R.A. 6713, and (b) dismissing the case filed against respondents Lope Panti, Sr., Leopoldo Panti and Fernando Asuncion for Malicious Mischief were elevated to said Office of the Ombudsman for review. As embodied in said Review Action, thus:

The case against private respondents for Malicious Mischief was likewise dismissed by the Hon. Asst. Prosecutor stating that private respondents demolished the structure in the honest belief that said structure could already be torn by them.

The dispositive portion of the aforementioned Review Action textually reads:

WHEREFORE, premises considered the undersigned respectfully recommends that the Resolution under Review be AFFIRMED.

As maybe intelligently gleaned from the foregoing, the dismissal of the above-entitled case by the Hon. 2nd Asst. Provincial Prosecutor Antonio C.A. Ayo, Jr. was likewise affirmed by the Ombudsman.

> WHEREFORE, premises considered, it is most respectfully prayed that the above-entitled case be QUASHED.
>
> Complainant's counsel was informed of the filing of the motion only a few minutes before the hearing began in the afternoon of August 10, 1998. She opposed the motion on the ground that its filing was not allowed under the Revised Rule on Summary Procedure. Instead of outrightly resolving the motion to quash, respondent judge required complainant's counsel to put her opposition in writing and, for this purpose, gave her 30 minutes to prepare the same.
>
> In an order, dated August 11, 1998, which complainant's counsel received only on September 8, 1998, respondent judge dismissed the criminal case for alleged lack of jurisdiction. The order reads:
>
> After going over the entire records of the case the same do not reveal that this case of Malicious Mischief which falls under the Summary Procedure in Special Cases as previously determined by its Court Order dated January 26, 1998 was referred first to the barangay justice for mediation and conciliation before filing the same with this Court.
>
> This being so, and even without determining the merits of the Motion to Quash and the Opposition thereto, the instant case is hereby ordered DISMISSED for lack of jurisdiction of the Court over the case. All proceedings and/or orders previously made are temporarily set aside until such time when the Court legally acquires jurisdiction over the case.

SO ORDERED.

On September 24, 1998, complainant's counsel moved for a reconsideration, claiming that the requirement to refer cases to Lupon Tagapayapa for conciliation and mediation proceedings did not apply to the criminal case because the parties were residents of different barangays. Respondent judge, therefore, reinstated the case and set it for pre-trial on December 16, 1998.

On October 7, 1998, the instant complaint was filed. Complainant alleges respondent judge should have denied the motion to quash the information filed by the accused instead of requiring his counsel to put her opposition in writing since the trial court is a court of record. Complainant alleges further that when his counsel complied with the court's order to put the opposition in writing and he and his counsel returned to the courtroom, they found that the session that afternoon had been adjourned and that the courtroom was already empty; that when they filed their written opposition, they were informed that the order containing the court's resolution would be mailed to them; and that in an order, dated August 11, 1998, respondent judge dismissed the criminal case for lack of prior referral of the case to the Lupon Tagapayapa for conciliation.

Complainant claims that respondent judge antedated his order of dismissal in order to hide the fact that it took him 20 days to resolve the motion to quash, making it appear that it was issued on August 11, 1998 when, in truth, it was mailed to his counsel on August 31, 1998 and received by the latter on September 8, 1998. Secondly, he contends that even if it were true that respondent judge acted on complainant's motion to quash on August 11, 1998, he should still be considered inefficient because it took him 11 months from September 25, 1997, when the complaint was filed, to determine whether the case should be dismissed for lack of prior referral to the Lupon Tagapayapa, only to later on retract the order of dismissal when it was pointed out to him that no prior referral was required as the parties lived in different barangays. Thirdly, complainant contends that respondent judge is guilty of impropriety by refusing to inhibit himself from the case despite the fact that one of the accused, Lope Panti, Sr., is the father-in-law of respondent judge's daughter.

In his comment on the complaint, respondent judge states:

ISSUES NOS. 2 & 3. When this case of Malicious Mischief was filed on September 25, 1997 a preliminary examination was conducted and [I] misapplied Art. 325, RPC by requiring the three accused to post P4,200.00 bail bond each for their liberty. However, subsequently and after perusing again the records of the case, it was later found out that the instant case falls on the Rules on Summary Procedure in Special Cases, and thus the Complaint was dismissed for failure of the Complainant to refer the matter first to the Barangay Justice.

ISSUE NO. 4. The private complainant and his counsel are simply jealous [of] the undersigned [considering] the fact that his son married [accused Lope Panti] Sr.'s daughter, not the undersigned's daughter marrying the former's son as alleged.

Actually, there is no cause for alarm on the complainant's part considering that the

proceedings of the case are just in the preliminaries and they have just began. In fact, before all these and during her first appearance before this Court, Atty. Dalisay approached this respondent inside his chamber inquiring from him if she can obtain fair and impartial trial in his court [despite] the fact that Lope Panti Sr. is his "balae"; right there and then she was assured that despite said fact, the balance of justice will not tilt in the accused's favor if it is not warranted.

It is sad to note that during the last hearing on August 10, 1998, Atty. Dalisay in her opening statement in open court with plenty of spectators and trial lawyers inside the courtroom had asked this humble representation what is the procedure adopted by his court in trying cases which question was answered in a soft and clear response to the effect that the procedures in Metro Manila courts are also applied and adopted by all courts even in the remotest barrio of the Philippines. (Annex "2"). Was she trying to show-off? The undersigned does not know, but what he knows is that his answer to Atty. Dalisay is just proper and appropriate to her intriguing and uncalled for question.

ISSUE NO. 5. It is not true that the accused through counsel, Atty. Velasco, filed their Motion to Quash a few minutes before the session in the afternoon on August 10, 1998. Records show that the said motion was rather filed at 9:25 A.M. of the same date. (Annex "3").

ISSUE NO. 6. Atty. Dalisay was given 30 minutes to make her Opposition to the Motion to Quash in writing. However, after perusing judiciously the facts of the case and without considering the merits of the Motion and the Opposition an Order dated August 11, 1998 was made dismissing the case for lack of jurisdiction.

A motion to dismiss/quash a case falling under the Rules on Summary Procedure in Special Cases is as a general rule prohibited, but such rule does not apply when said motion is based on lack of jurisdiction of the Court or failure of referral to a barangay (p. 21, notes & cases on the 1991 Revised Rules on Summary Procedure, by Ernani Cruz Paño and Daniel T. Martinez) or when the ground is double jeopardy. Based on lack of jurisdiction and such ground being supported by facts on records, a minute resolution was made.

According to the complainant, when his counsel returned to the courtroom at 2:48 P.M., the session was already adjourned and that the undersigned, Atty. Velasco and that the personnel were all gone. This is a brazen lie! The Court personnel were just outside the Court right at the lobby sitting on the benches for a fresh air as our court is not air-conditioned (Annex "4"). The undersigned was inside his chamber drafting a decision. Complainant's counsel should have [made] known her presence to the judge so that the session could be resumed [even if] to the mind of the Court oral arguments on the Motion and Opposition thereto is no longer necessary as a Minute resolution to the two pleadings could be had as the legal basis for the same is clear. If it is true that the court personnel were all gone at 2:48 P.M., Atty. Dalisay or this complainant is lying in saying that the Clerk of Court had told her that the Order of August 11, 1998 will just be sent by mail to the counsel.

It is inconceivable how a lawyer from Metro Manila and still new in the environment [could have] concluded that not one court employee was still around at that time when the truth is that she does not know who are really the personnel in said court. Such a conclusion is baseless and misleading.

ISSUES NOS. 7 & 8. The accusation that the Order dated August 11, 1998 was antedated is again misleading and a desperate allusion of the Complainant and his counsel. Atty. Dalisay must know for herself that the date of the making/drafting and typing of an Order, more often than not, is different from the date of the mailing. Certain internal processes must first intervene or take place between these two types of work for smooth office flow of communications. The volume of work because of the big volume of pending cases had caused the unwanted delay in the preparation and mailing of the Order.

ISSUE NO. 9. The allegation of the complainant that the case has been pending for 11 months already and yet the final determination as [to] its nature has not been resolved is not a conclusive presumption that the undersigned is incompetent and inefficient, nor shall he be liable for not applying the Rules on Summary Procedure in Special Cases as the first ruling made was to the effect that the case falls on the regular procedure [and] the actions taken by the judge is not deliberate to evade the applications of the summary procedure.

For your kind information this humble representation might also be the same with other judges who have multi courts under him. The undersigned is the Presiding Judge of the capital town of Catanduanes, Virac, the metropolis of the province. On August 18, 1997, he was designated as Acting MTC Judge of San Andres, the second biggest town, 17 kilometers from Virac (annex "5"). And subsequently, he found himself again already radiating in other MCTCs of Bato-San Miguel and Baras-Gigmoto due to another designations (Annex "6" & "7"). Besides these, he is also trying inhibited cases of the other judge in the northern towns of the province with almost impassable rugged roads. Because of the pressure of the work and vicarious responsibility over these six (6) courts, he is now hypertensive.

Should the undersigned [be found] remiss in his work, he seeks therefore your kind indulgence and understanding. Anyway, such was not made with conscious and deliberate intent to do an injustice. The Supreme Court in its En Banc Decision, Justice Campos, Jr., Luis Vuitton, S.A. vs. Diaz Villanueva, Adm. Case No. MTJ-92-643, November 27, 1992, it was ruled that in order to hold a judge liable, it must be shown beyond reasonable doubt that the judgment is unjust and that it was made with conscious and deliberate intent to do an injustice. x x x (underscoring supplied).

In another case the Supreme Court said x x x that the complaint against the respondent judge be dismissed as the issuance of the complained orders and decision pertain to respondent's judicial functions, which in the absence of fraud and bad faith, may not be proper considerations to charge a judge though these acts may be erroneous. The Court further held that the imputation of partiality was a mere suspicion and that as a matter of public policy, the acts of a judge in his official capacity are not subject to disciplinary action. (Equatorial Realty Development Inc. vs. Judge Casiano P. Asuncion, A.M. No. MTJ-91-562, October 10, 1997)

NOW THEREFORE, premises considered, it is most respectfully prayed unto this Honorable Office and to the Honorable Chief of Justice and to the Members of the Supreme Court that the Affidavit-Complaint be dismissed for lack of merit and the same be considered terminated and finally closed.