

SECOND DIVISION

[A.M. No. RTJ-93-964, February 28, 1996]

LEOVIGILDO U. MANTARING, COMPLAINANT, VS. JUDGE MANUEL A. ROMAN, JR., RTC, BRANCH 42, PINAMALAYAN, ORIENTAL MINDORO; AND JUDGE IRENEO B. MOLATO, MTC, BONGABON, ORIENTAL MINDORO, RESPONDENTS.

DECISION

MENDOZA, J.:

Respondent Judge Ireneo B. Molato is the presiding judge of the Municipal Trial Court of Bongabon, Oriental Mindoro. On January 7, 1993, an administrative complaint was filed against him and Judge Manuel A. Roman, Jr., presiding judge of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 42, by Leovigildo U. Mantaring, Sr., who charged them with conduct unbecoming of members of the judiciary. On February 21, 1994, after the parties had filed their respective pleadings and supporting documents, this Court dismissed the complaint against the two for lack of merit. The motion for reconsideration filed by complainant was subsequently denied.

What is before us now is the Supplemental Complaint filed by Leovigildo U. Mantaring, Sr. against Judge Ireneo B. Molato, which charges him with harassment. It is alleged that because of the filing of the first complaint against him, respondent Judge Ireneo B. Molato should have inhibited himself from conducting the preliminary investigation of a criminal case considering that the respondents in that case were complainant and his son. Instead, it is alleged, he took cognizance of the case and ordered the arrest of complainant and his son, Leovigildo Mantaring, Jr., out of hatred and revenge for them because of the filing of the first case by the complainant.

The Supplemental Complaint was referred to the Office of the Court Administrator which, in a Memorandum dated 25 November 1994, recommended the dismissal of the case for lack of merit. Nonetheless, the Court required the respondent Judge Ireneo B. Molato to comment.

In his Comment dated July 6, 1995, respondent judge denies the allegations against him. He avers that on the application by SPO4 Pacifico L. Fradejas, he issued a search warrant which resulted in the seizure from a certain Joel Gamo of a home-made gun, a hand grenade, five live ammunitions for Cal. 38 and three live ammunitions for 12 gauge shotgun; that on August 25, 1993, a complaint for Illegal Possession of Firearms and Ammunition was filed against Joel Gamo in which the herein complainant Leovigildo, Sr. and his son, Leovigildo, Jr., were included; that finding that the house in which the firearms and ammunition had been found was owned by complainant and his son, he concluded that there was probable cause to believe that complainant and his son were guilty of illegal possession of firearms and

ammunition and accordingly ordered their arrest. Respondent judge claims that he inhibited himself from the case after he was ordered by the Executive Judge, RTC, Branch 41, Pinamalayan, Oriental Mindoro.

In his Reply complainant contends that as the search warrant was issued only against Joel Gamo and Mantaring, Jr. it was wrong for respondent judge to find probable cause against him on the theory that, as owners of the house in which the firearms and ammunitions were found, they had constructive possession of the same. He likewise contends that respondent judge did not inhibit himself until after the preliminary examination was terminated and the warrant of arrest issued, and only after complainant had filed a petition for inhibition which the Executive Judge found to be well taken.

On October 16, 1995, this case was referred to the OCA for reevaluation, report and recommendation. On January 12, 1996, the OCA submitted a Memorandum, recommending dismissal of the supplemental complaint for lack of merit, for the following reasons:

(1) It is erroneous for herein complainant to equate the application for the issuance of search warrant with the institution and prosecution of criminal action in a trial court. (Malaloan vs. Court of Appeals, 232 SCRA 249). Complainant cannot insist that since his name was not included in the search warrant, the house designated to be searched did not belong to him, and that he was not present at the preliminary investigation of witnesses preparatory to the issuance of the questioned warrant of arrest, there was no basis for respondent judge to order his arrest.

(2) No taint of irregularity attended the issuance by respondent judge of the warrant of arrest against complainant and his son. Neither was the charge that the warrant of arrest was issued by respondent judge in the spirit of anger, hatred or harassment purposes substantiated.

To begin with, it cannot be contended that complainant Leovigildo Mantaring, Sr. could not be proceeded against simply because he was not included in the search warrant issued against Gamo and Leovigildo Mantaring, Jr., who is apparently his son. The determination of probable cause in preliminary investigations is based solely on the evidence presented by the complainant, regardless of whether or not the respondent in that case is named in the proceedings for a search warrant. As correctly pointed out by, the OCA,^[1] the issuance of a search warrant and of a warrant of arrest requires the showing of probabilities as to different facts. In the case of search warrants, the determination is based on the finding that (1) the articles to be seized are connected to a criminal activity and (2) they are found in the place to be searched. It is not necessary that a particular person be implicated. On the other hand, in arrest cases, the determination of probable cause is based on a finding that a crime has been committed and that the person to be arrested has committed it.

In this case, the arrest of herein complainant and his son, together with Joel Gamo, was ordered on the basis of respondents' finding that the place from where the guns