

## **FIRST DIVISION**

**[ A.M. No. MTJ-96-1096, September 10, 1996 ]**

**ELEAZAR JOSEP, COMPLAINANT, VS. JUDGE JOVITO C. ABARQUEZ, MUNICIPAL CIRCUIT TRIAL COURT STA. RITA TALALORA, SAMAR, RESPONDENT.**

### **D E C I S I O N**

**PADILLA, J.:**

In a sworn complaint dated 16 January 1995, Eleazar Josep prayed that respondent Judge Jovito C. Abarquez, presiding judge of the Municipal Circuit Trial Court, Sta. Rita-Talalora, Samar, be held administratively liable for ignorance of the law and abuse of authority.

The complaint avers that:

1. complainant is the father of Eleazabille Josep who is charged with estafa in Criminal Case No. 94-12-175 pending in the sala of respondent Judge Abarquez;
2. sometime in December 1994, Eleazabille eloped with her boyfriend, a certain Ramil Malate;
3. complainant later took custody of his daughter and brought her back to their residence in Tacloban City;
4. on 29 December 1994, members of the Philippine National Police (PNP) went to their residence and arrested his daughter on the strength of a warrant of arrest issued by respondent judge-
5. on the same day, his daughter was brought to the house of Natividad Malate, the mother of Ramil Malate;
6. upon verification with the Municipal Circuit Trial Court of Sta. Rita, Samar, complainant learned that the complaint filed against his daughter was an ordinary collection case for payment of a Ten Thousand Peso (P10,000.00) debt;
7. it was improbable that his daughter would incur a Ten Thousand (P10,000.00) Peso debt since she was regularly receiving money from an American friend;
8. further verification showed that the complaint-affidavit upon which the complaint for estafa was based is not supported by any evidence of indebtedness;
9. in the course of complainant's verification of the status of his daughter's case, respondent Judge Abarquez tried to convince him not to interfere with the relationship of his daughter with Ramil Malate. He later learned that respondent

judge is a relative of Ramil Malate;

10. he (complainant), therefore, believes that the warrant of arrest was issued by respondent judge only to get his daughter away from him;

11. the Constitution clearly provides that no one shall be imprisoned for non-payment of debt;

12. respondent Judge Abarquez thus should be held liable for gross ignorance of the law and abuse of authority,

Respondent Judge Abarquez filed his comment on the complaint dated 18 August 1995. He states therein that:

a. it is not true that complainant's daughter Eleazabille Josep was brought to the house of Ramil Malate. Records show that she was detained at the Municipal Jail of Sta. Rita, Samar and was later released upon posting of her bail bond;

b. after careful perusal and evaluation of the complaint of the PNP and the attached affidavit-complaint, he believed that the elements of estafa under Article 316 of the Revised Penal Code were adequately averred in the complaints;

c. he acted within his jurisdiction in issuing the warrant of arrest;

d. he never took up the matter of the relationship of complainant's daughter with Ramil Malate. He likewise denies being related to Malate;

e. complainant, who apparently is having serious family problems, should not drag other people into his personal affairs nor try to destroy another's name and reputation.

On 29 November 1995, the Court referred the matter to Judge Godofredo P. Quimsing, Acting Executive Judge, Regional Trial Court, Basey, Samar for investigation, report and recommendation.

On 8 March 1996, Judge Quimsing submitted a report with the following findings:

1. Natividad Malate (the mother of Ramil Malate) was one of the witnesses to the complaint for collection of debt (estafa) filed by a certain Ana Marita Despogado against complainant's daughter;

2. Complainant's daughter was brought to respondent judge's house after her arrest. Complainant went with his daughter intending to post a cash bond. Respondent judge advised complainant to file the same with the Municipal Treasurer;

3. It is not denied that Natividad Malate and the complainant in the estafa case, Ana Marita Despogado, were at respondent judge's house when Eleazabille Josep was arrested and brought thereto;

4. Eleazabille Josep admitted borrowing Ten Thousand Pesos (P10,000.00) from Despogado which she has yet to pay. She also admitted that it was her father who